

The Constitution of Disability in the Early United States

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A Dissertation presented to the Graduate Faculty  
of the College of William and Mary in Candidacy for the Degree of  
Doctor of Philosophy

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The College of William and Mary  
August, 2016

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## APPROVAL PAGE

This Dissertation is submitted in partial fulfillment of  
the requirements for the degree of

Doctor of Philosophy



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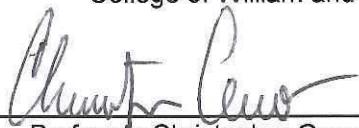
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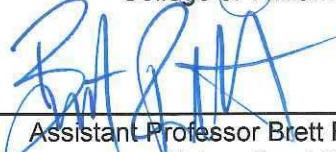
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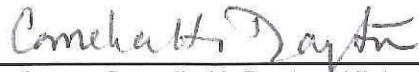
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## ABSTRACT

"The Constitution of Disability" examines the creation and implementation of bureaucratic, legal, institutional, and cultural categories of disability in the Early American Republic. Scholarship in early American studies, disability studies, and the history of medicine has been slow to account for disability—and its status as a political, legal, and administrative classification in particular—during the period. This dissertation shows how disability became a meaningful designation in diverse venues, from the provision of federal and state pensions to wounded veterans and deaf and blind students to the restrictions imposed on those deemed to be cognitively disabled by state and federal courts.

A wide range of sources underpin the study. Governmental and legal records demonstrate the role of political officials and judges in formulating and refining disability categories as well as how these constructs were negotiated by those who both claimed and rejected the designation. Institutional accounts, newspaper advertisements, patent documents, visual art, and material objects reveal how Americans developed and contested disability classifications in various sectors of the market economy. Writings by physicians expose the increasing medicalization of the category of disability. In addition, genealogical materials, such as census records and family histories, facilitate the recovery of the lives and experiences of many impaired and disabled people.

Ultimately, the dissertation argues that Americans—bureaucrats, judges, institutional administrators, artists, inventors, producers, and consumers—struggled to determine what disability meant and therefore who should be entitled to the benefits and strictures associated with the classification. As a result, many turned to physicians to preside over the designation of disability. These emerging professionals used the specialized and seemingly impartial language of medicine to lend the category of disability greater shape, weight, and authority. They also used their newfound positions as adjudicators of disability to assert and claim professional status. By the mid-nineteenth century, disability was a more standardized, medicalized, and significant administrative, institutional, and cultural categorization and physicians were viewed as experts on disability policy and disabled people.

## TABLE OF CONTENTS

Acknowledgements	ii
List of Figures	v
Introduction	1
Chapter 1. Physical and Intellectual Impairment in Colonial America	23
Part I. Disability as a Bureaucratic and Legal Category	
Chapter 2. Invalid Pensions for Wounded Revolutionary War Veterans	55
Chapter 3. Educational Pensions for Blind and Deaf Young Adults	89
Chapter 4. Legal Restrictions on People with Intellectual Impairments	126
Part II. Disability as an Institutional and Cultural Category	
Chapter 5. Disability Benefits in Insurance and Mutual Aid Societies	165
Chapter 6. Performances of Dis/ability by Physically-Atypical Artists	199
Chapter 7. Technologies to Accommodate Impairment and their Producers	247
Part III. The Constitution of Disability	
Chapter 8. Medicine and the Entrenchment of the Category of Disability	291
Conclusion	321
Vita	332

## ACKNOWLEDGEMENTS

I am humbled and honored to have the opportunity to publicly thank the many people who have supported me as I have researched and written this dissertation.

Research for this project began during my first semester in graduate school, although I didn't know it then. I am grateful to Barbara Luck and Laura Barry at the Colonial Williamsburg Foundation for introducing me to Martha Ann Honeywell, the artist discussed further in Chapter 6 who inspired my initial forays into disability studies and disability history. Brett Rushforth, who directed my first research seminar, provided valuable guidance at this early stage as did other graduate students in the course. In addition, historians and archivists at the American Antiquarian Society, Historic Deerfield, the Lynchburg Museum, the Smithsonian American Art Museum, the Valentine, the Virginia Historical Society, and the Winterthur Museum, Garden, and Library were helpful, providing early leads and information.

Fellowships at a number of libraries and institutions allowed me to pursue my research in greater depth. I am thankful to the American Philosophical Society, the Historical Society of Pennsylvania, the Library Company of Philadelphia, the New-York Historical Society, and the Winterthur Museum, Garden, and Library for extending me financial support and a home for my research for a few months. Knowledgeable archivists at each institution were fundamental to the development of this project as were other fellows and scholars whose visits overlapped with mine. My gratitude also goes to Chiyo Moriuchi and Mark Haber, Nancy and Richard Williams, and Eleanor Gesensway for housing (and often feeding!) me during this time.

Shorter visits to other institutions yielded additional sources crucial to this project. I am particularly appreciative of archival staff at the American Antiquarian Society, the Connecticut Historical Society, the Gilder Lehrman Collection, the Massachusetts State Archives, the National Archives at Boston, the National Archives at Washington, DC, and the New York Academy of Medicine. In addition, this project has profited greatly from sources available in online collections, including American Periodicals Series, America's Historical Imprints, America's Historical Newspapers, American Memory by the Library of Congress, Ancestry.com, Archive.org, Fold3, Google Books, HathiTrust Digital Library, and Papers of the War Department.

Year-long writing fellowships gave me the opportunity to consider the sources I had found and conceptualize and articulate my conclusions without other work-

related commitments. My sincere gratitude goes to the American Association of University Women, which awarded me an American Fellowship in 2014-2015, and the Office of the Provost at the College of William & Mary, which awarded me a Provost's Dissertation Fellowship in 2015-2016. These grants benefited this dissertation immensely and were essential to its timely completion.

The College of William & Mary, in general, has been an incredibly supportive institution at which to conduct my graduate study. I am thankful to the Office of Graduate Studies and Research for numerous grants to attend conferences and pursue research. This dissertation would not have been possible without the fantastic resources at the Earl Gregg Swem Library. The opportunity to attend colloquia on campus at the Omohundro Institute of Early American History and Culture is perhaps the greatest gift any graduate student in early American history could ask for. Most importantly, the History Department has provided me not only with ample funding, but also a wonderful intellectual community in which to start and develop my career. My deepest thanks go to faculty in the department as well as other graduate students.

I also want to acknowledge particular people who have been instrumental to my intellectual development and the writing of this dissertation. Sari Altschuler, Cristobal Silva, and Benjamin Irvin offered valuable insight on material discussed in Chapter 2. Catherine Kelly helped me formulate ideas and contextualize information outlined in Chapter 6. In addition, Claire Jones, Zorina Khan, and other participants in the Disability and Prostheses: Rethinking Patent Cultures conference at the Centre for the History & Philosophy of Science at the University of Leeds provided helpful feedback on work appearing in Chapter 7.

Members of my Dissertation Group—Christopher Jones, Molly Perry, and Kristina Poznan—supported me throughout the research and writing of this dissertation. I am deeply thankful for the time and energy they spent reading large segments of this work and for their insightful comments, which helped me to refine and more clearly articulate my findings. I am also grateful for their comradery and good humor, which provided a much needed break from the isolation of the writing process.

Members of my Dissertation Committee—Cornelia H. Dayton, Christopher Grasso, Charles McGovern, and Brett Rushforth—extended invaluable feedback, especially at my defense. I sincerely appreciate their engagement with my work and their perceptive questions and insights, which I know will continue to inform this project in its future iterations.

I could not have asked for a better Dissertation Committee Chair and advisor than Karin Wulf. Since my first semester in graduate school, she has been continually supportive yet demanding, holding me to high standards and also providing me with the tools and skills to succeed. Her guidance has shaped and

enriched this dissertation immeasurably. I cannot thank her enough for the time and energy she has devoted to my learning and work.

Finally, I am indebted to my family and friends for their support throughout this project. Friends in Williamsburg, Columbia, and beyond have made my time in graduate school fun and filled with many laughs. I am deeply grateful to my family—Susan Peck, Jonathan Daen, Nicholas and Rebecca—for their endless encouragement. And, Colin Jones has provided me not only with a sunny office and as much organic food as I could have asked for, but also with many insightful comments about my research and constant cheerleading along the way. Many, many thanks.

## LIST OF FIGURES

1. Charles Willson Peale, <i>The Artist in His Museum</i> , 1822.	2
2. Edwin Forbes, "Mr. S. K. G. Nellis. The Wonder of the World," n.d.	4
3. Saunders K. G. Nellis, "Novel Exhibition," 1847-1849. View of top third of broadside.	200
4. Saunders K. G. Nellis, "Novel Exhibition," 1847-1849. View of middle third of broadside.	201
5. Saunders K. G. Nellis, Cut Paper Picture, n.d.	203
6. Phineas Taylor "P. T." Barnum, Daguerreotype, 1851.	207
7. Martha Ann Honeywell, Embroidered Paper Cutting of the Lord's Prayer, n.d.	211
8. Martha Ann Honeywell, Silhouette of Eliza L. Tinsley Wharton, 1842.	213
9. Sarah Rogers, Watercolor of a Bird and Dragonfly, n.d.	214
10. Sarah Biffin (Mrs. E. M. Wright), Miniature Self-Portrait, 1830.	222
11. Louis Joseph César Ducornet, <i>Portrait du Général François de Négrier sur le Champs-de-Mars à Lille</i> , 1856.	224
12. <i>The Beautiful Albiness</i> , 1816.	226
13. James Ledgwood, Handwriting Sample, 1842.	230
14. John Reuben Chapin, "View of the American Museum, Broadway, New York," n.d.	235
15. John Charles Jenckes, "Alleviator," 1823.	248
16. John Mead, "Valetudinary Chair," 1817.	254
17. Benjamin Franklin Hays, "Easy Chair," 1835.	255

18. Hezekiah L. Thistle, "Saddle for Removing the Sick and for Other Purposes," 1837.	259
19. Thomas Lane, "Ruler and Quill-Holder," 1819.	265
20. Captain George Fitzgerald Stack, "Apparatus for those who have lost an arm," 1821.	267
21. George Webb Derenzy, "Quill-Holder," 1822.	269
22. George Webb Derenzy, "Ivory Vice," 1822.	269
23. "Aunt Patty's Cradle," c. 1840.	275
24. John Collier, "Some write for pleasure, some for spite..." 1810.	276
25. Bed Chair / Bed Rest, 1790-1830.	278
26. Rocking Chair, 1808-1815, with alterations 1835-1850.	279
27. U. S. Census Form, "Schedule of the Whole Number of Persons," 1840.	322
28. U. S. Census Form, "Schedule of the Whole Number of Persons," 1840. View of Right Third of Schedule.	323

## Introduction

For many historians, the famous artist and museum proprietor Charles Willson Peale is emblematic of the Early American Republic. Consider scholarly readings of his self-portrait, *The Artist in his Museum* [Figure 1]. Completed in 1822, Peale depicts himself in the Long Room, the central exhibition space of his Philadelphia Museum, drawing back a rich red curtain and welcoming visitors to his immense collection of natural and scientific specimens. Their arrangement according to the Linnaean system of classification, scholars have argued, reflects Enlightenment-era principles of reason, science, and dominion over nature. The paintings of Revolutionary War heroes and statesmen on the walls to Peale's left, others suggest, signify the period's budding patriotic and nationalistic sentiment. In addition, historians have looked to the diverse patrons—a young woman, a father and his son—in the portrait's background to discuss the implementation of the nation's republican, even democratic, values. In the portrait's foreground, Peale looms large, a masterful curator of his exhibition and a guide for viewers into the rational and ordered world of the new republic that he presented and conceived.<sup>1</sup>

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<sup>1</sup> For more on Peale, see: Charles Coleman Sellers, *Charles Willson Peale* (New York: Charles Scribner's Sons, 1969); Lillian B. Miller, ed., *The Peale Family: Creation of a Legacy, 1770-1870* (New York: Abbeville Press in association with the Trust for Museum Exhibitions and the National Portrait Gallery, Smithsonian Institution, 1996); David C. Ward, *Charles Willson Peale: Art and Selfhood in the Early Republic* (Berkeley, Los Angeles, and London: University of California Press, 2004); Norma K. Risjord, *Representative Americans: The Revolutionary Generation* (Lanham, Boulder, New York, Oxford: Rowman & Littlefield Publishers, Inc, 2001), 141-156. For more on *The Artist in his Museum* in particular, see: Roger B. Stein, "Charles Willson Peale's Expressive Design: *The Artist in his Museum*," in *New Perspectives on Charles Willson Peale*, eds. Lillian B. Miller and David C. Ward (Pittsburg, PA: Published for the Smithsonian Institution by the University of Pittsburgh Press, 1991), 167-218; Ward, *Charles Willson Peale*, ch. 8; Wendy Bellion, *Citizen Spectator: Art, Illusion, & Visual Perception in Early National America* (Chapel Hill: Published for the

Figure 1: Charles Willson Peale. *The Artist in His Museum*. 1822. Oil on Canvas. The George W. Elkins Collection. Philadelphia Museum of Art, PA.



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Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 2011), 1-2; Laura Rigal, *The America Manufactory: Art, Labor, and the World of Things in the Early Republic* (Princeton, NJ: Princeton University Press, 1998), 109-113.

Another portrait with striking similarities to Peale's encourages us to notice a less-studied but equally evocative emblem of early national culture. Etched and perhaps drawn by Edwin Forbes, the portrait portrays Saunders Kew Grems Nellis, an American artist, performer, and comedian, welcoming spectators to his show [Figure 2].<sup>2</sup> As in *The Artist in his Museum*, the walls are lined with rows of display cases, Nellis's props and prized possessions are positioned in the foreground, and an opulent fringed curtain hangs from above. Unlike Peale, however, Nellis is not exhibiting biological and ethnographic objects, but rather the abilities and disabilities of his uncommonly-shaped body, which was of a distinctly shorter stature and lacked arms and hands. On the walls are depictions of the artist cutting paper silhouettes, watch-papers, and valentines; playing the accordion, cello, triangle, and drums; and shooting a bow and arrow, all with his feet. The portrait is further adorned with prototypical American symbols: an eagle, arrows, olive branch, and shield all appear at the center of the curtain. Like Peale, Nellis stands front and center, presenting himself as a skilled artist and entertainer, the "wonder of the world."<sup>3</sup>

While Peale's portrait is emblematic of early national culture's focus on Enlightenment and republican ideals, Nellis's is equally representative, but

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<sup>2</sup> The original artist and date of the portrait are unknown. Forbes may have both designed and etched the image. Considering Nellis' artistic talents, he may also have created it. Forbes most likely etched the portrait in the late 1850s; however, he may have based the work on an earlier illustration. "Mr. S. K. G. Nellis. The Wonder of the World," American Portrait Prints Collection, American Antiquarian Society, Worcester, MA; Walt Reed, *The Illustrator in America, 1860-2000* (New York: Society of Illustrators, 2001), 17.

<sup>3</sup> "Mr. S. K. G. Nellis. The Wonder of the World," American Portrait Prints Collection, American Antiquarian Society.

Figure 2: "Mr. S. K. G. Nellis. The Wonder of the World." Etched by Edwin Forbes. Unknown Date. American Portrait Prints Collection. American Antiquarian Society, Worcester, MA.



for his attention to questions of ability and disability. Between 1828 and 1865, Nellis traveled and performed for customers throughout the United States and in more than ten countries around the world, captivating them with the surprising confluence of his artistic capacities and physical incapacities. Patrons expected to see his impairments as hindrances to his creative and commercial labors. Showing instead how the limitations of his body coexisted with and even enhanced his artistic skills, Nellis challenged viewers' preconceptions about impairment and disability and, in turn, cultivated career and profit. Nellis was a masterful cultural critic and observer. He recognized that his audiences were deeply interested and invested in the meanings of ability and disability and the relationship between capacity and labor. By displaying, exploring, and confounding these concepts in his exhibitions, he facilitated his consumer appeal and success for thirty-seven years.<sup>4</sup>

Following Nellis's lead, this dissertation explores conceptions, conversations, and contestations about ability and disability in the Early American Republic, from approximately 1790 to 1840. A rich and varied source base demonstrates that disability emerged during the period as a meaningful bureaucratic, legal, institutional, and cultural category, rooted in ideas about work, social worth, and economic independence and increasingly determined by the expert discourse of medicine. In the American colonies, physical and cognitive impairments rarely had legal and political consequences or were viewed as necessarily disabling conditions. After the Revolution, however, bureaucratic growth and new beliefs about the benefits

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<sup>4</sup> Nellis's life and work will be further discussed in chapter 6.

and responsibilities of citizenship led federal and state officials to employ disability as a category of social welfare and exclusion. At the same time, the market for products and services related to impairment boomed, bringing classifications of disability into the early national economy. These changes sparked heated debates about the meanings of disability and the repercussions of bodily incapacity, which unfolded in diverse venues, from the offices of state administrators to the exhibitions of uniquely abled and disabled artists like Nellis.

Ultimately, governmental and community authorities attempted to resolve these disputes about disability and enforce particular formulations of the category by cultivating alliances with physicians. Desirous of implementing the new disability-based provisions and strictures but unable to create coherent and consistent categories of disability, bureaucrats, judges, and many everyday Americans turned to doctors, who used the specialized and seemingly impartial language of medicine to lend the construct greater shape, weight, and meaning. People who were found to be disabled—and who either coveted or resented the designation—relentlessly negotiated the definition and implementation of the new classification, articulating their own conceptions of capacity in support of their individual needs. Increased regulation and medicalization, however, made it increasingly difficult for them to advocate on their own behalf. By the mid-nineteenth century, disability was a more standardized, medically-determined, and significant administrative, institutional, and cultural categorization and physicians were viewed as experts on disability policy and disabled people.

This study brings together three scholarly literatures—early American studies, disability studies, and the history of medicine—which have only recently begun to intersect. Historians of early America have been slow to account for disability and have not yet pursued a comprehensive examination of the subject in the colonial and early national periods. Born from rights-based activism by and for disabled people in the mid- to late twentieth century, disability studies emerged in the academy in the 1980s and has grown substantially in the decades since. A central tenet of disability studies is that disability is socially and culturally constructed. While biological and environmental factors may cause corporal and intellectual variations and impairments, these conditions become disabling when they are met with the prejudices and political, economic, social, and physical barriers imposed by an ablebodied-dominated society.<sup>5</sup> As a result, disabilities may vary across time, space, culture, and political organization. Scholars of early America have intensely examined how constructs of race, class, gender, and sexuality developed, changed, and were politicized throughout the colonial and early national periods. Until recently, however, little discrete attention has been paid

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<sup>5</sup> For introductions to disability studies, see: Simi Linton, *Claiming Disability: Knowledge and Identity* (New York and London: New York University Press, 1998); Tobin Siebers, *Disability Theory* (Ann Arbor: University of Michigan Press, 2008); Colin Barnes and Geof Mercer, *Exploring Disability* (Cambridge and Malden: Polity Press, 2010); Tom Shakespeare, “The Social Model of Disability: An Outdated Ideology?” *Research in Social Science and Disability* 2 (2002), 9-28. For the development of the fields of disability studies and disability history, see: Richard K. Scotch, “Nothing about Us without Us’: Disability Rights in America,” *The OAH Magazine of History* 23, 2 (June 2009), 17-22; David Pfeiffer and Gary Kiger, “Disability Studies and the Study of Disability,” *Journal of Health and Human Services Administration* 17, 4 (Spring 1995), 381-390; Paul K. Longmore and Lauri Umansky, eds., *The New Disability History: American Perspectives* (New York: New York University Press, 2001), Introduction.

to disability and even then, only in disparate and limited, albeit fascinating, contexts.<sup>6</sup>

When historians of early America have acknowledged disability, it has primarily been in studies of related subjects, such as poverty and slavery. Scholarship on poverty has often uncovered people with various incapacities and theorized the relationship between indigence, bodily unconventionality, and ill health. In *Unwelcome Americans*, for example, Ruth Wallis Herndon discusses the corporeal conditions that led many Rhode Island inhabitants into financial distress, while in *Scraping By*, Seth Rockman chronicles the disastrous consequences of medical bills and lost labor on account of sickness for poor men and women in Baltimore. Studies of slavery have also been rife with ailing and injured people, marked by the violence of forced

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<sup>6</sup> Scholarship on early American medicine, health, and disease tends to overlook the long-term experience of impairment and the construct of disability; for an introduction to this vast literature, see: Richard Harrison Shryock, *Medicine and Society in America, 1660-1830* (New York: New York University Press, 1960); Judith W. Leavitt and Ronald L. Numbers, eds., *Sickness and Health in America: Readings in the History of Medicine and Public Health* (Madison, WI: The University of Wisconsin Press, 1978); J. Worth Estes, *Hall Jackson and the Purple Foxglove: Medical Practice and Research in Revolutionary America, 1760-1820* (Hanover, NH: University Press of New England, 1979); Rebecca Tannenbaum, *Health and Wellness in Colonial America* (Santa Barbara, CA, Denver, CO, and Oxford, England: Greenwood Press, 2012). For a few exceptions to this rule, see: Sheila M. Rothman, *Living in the Shadow of Death: Tuberculosis and the Social Experience of Illness in American History* (Baltimore and London: The Johns Hopkins University Press, 1996); Elaine Forman Crane, “I have Suffer’d Much Today’: The Defining Force of Pain in Early America,” in *Through a Glass Darkly: Reflections on Personal Identity in Early America*, eds. Ronald Hoffman, Mechal Sobel, and Fredrika J. Teute (Chapel Hill and London: Published for the Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 1997), 370-403; Ben Mutschler, “The Province of Affliction: Illness in New England, 1690-1820” (Ph.D. Dissertation, Columbia University, 2000). There have also been studies of particular diseases in early America, which, again, tend to ignore chronic impairment and the concept of disability; for examples, see: Elizabeth Fenn, *Pox Americana: The Great Smallpox Epidemic of 1775-82* (New York: Hill and Wang, a Division of Farrar, Straus and Giroux, 2001); J. Worth Estes and Billy G. Smith, eds., *A Melancholy Scene of Devastation: The Public Response to the 1793 Philadelphia Yellow Fever Epidemic* (Canton, MA: Science History Publications/USA, for the College of Physicians of Philadelphia and the Library Company of Philadelphia, 1997). Scholarship on the changing nature of the constructs of race, class, gender, and sexuality is too vast and varied to recapitulate.

migration and captivity. In some cases, scholars have drawn connections between visible deformity and the development of racial ideologies. As Kirsten Fischer demonstrates in *Suspect Relations*, physical and sexual mutilation made manifest the power dynamics between master and slave. Impairment and disability have additionally occasionally figured into other areas of early American studies, from law to governance, religion, family life, and migration. Overall, this general attention to bodily incapacity has raised important questions for the historian interested in early American disability: are poverty and disability entangled categories? How does disability inform conceptions of race and gender? Nevertheless, sustained consideration of disability in the field has largely been lacking.<sup>7</sup>

Over the last five years, however, some scholars have built on select preceding works to more closely examine disability in the colonial and early national periods. Sari Altschuler, for example, has analyzed disability in period novels and found that impaired people rarely appeared in these works and when they did, they were not stigmatized. Cornelia Dayton has investigated the contested will case of Joseph Gorham, an eighteenth-century Massachusetts man who was described as “Disordered in his Intelectuals,” and considered the usefulness of contextualizing his experiences through present-day understandings of autism. In addition, Daniel Blackie has evaluated the post-war experiences of wounded Revolutionary War veterans

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<sup>7</sup> Ruth Wallis Herndon, *Unwelcome Americans: Living on the Margin in Early New England* (Philadelphia: University of Pennsylvania Press, 2001); Seth Rockman, *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore* (Baltimore: Johns Hopkins University Press, 2009), esp. 181-182; Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca and London: Cornell University Press, 2002), ch. 5.

and determined that their social and economic circumstances did not differ markedly from their comparatively ablebodied counterparts until approximately 1820. Other scholars have studied disability in colonial law and material culture and early national religion and slavery. Together, these works form the beginning of a rich scholarly subfield comprised of historians, literary scholars, and material culture experts that focuses on early American disability. This dissertation seeks to contribute to this emerging field, revealing how physical and cognitive differences and incapacities became disabling governmental, institutional, and cultural categories in multiple diverse venues following the Revolution.<sup>8</sup>

Studying disability holds the potential to contribute to scholarship on early America not only by acknowledging an experience that affected many early Americans, but also by providing a new framework for approaching more traditionally studied topics, such as market relations and state formation. Scholars of disability estimate that one-fifth of the world currently experiences

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<sup>8</sup> Sari Altschuler, “‘Ain’t One Limb Enough?’: Historicizing Disability in the American Novel,” *American Literature* 86, 2 (June 2014), 245-274; Cornelia H. Dayton, “‘The Oddest Man that I Ever Saw’: Assessing Cognitive Disability on Eighteenth-Century Cape Cod,” *Journal of Social History* 49, 1 (Fall 2015); Daniel Blackie, “Disabled Revolutionary War Veterans and the Construction of Disability in the Early United States, c. 1776-1840” (Ph.D. Dissertation, University of Helsinki, 2010). Also see: Parnel Wickham, “Conceptions of Idiocy in Colonial Massachusetts,” *Journal of Social History* 35, 4 (Summer 2002), 935-954; Katherine Ott, David Serlin, and Stephen Mihm, eds., *Artificial Parts, Practical Lives: Modern Histories of Prosthetics* (New York and London: New York University Press, 2002); Sari Altschuler, “‘He that Hath an Ear to Hear’: Deaf America and the Second Great Awakening,” *Disability Studies Quarterly* 31, 1 (2011); Dea Boster, “Unfit for Bondage: Disability and African American Slavery in the United States, 1800-1860” (Ph.D. Dissertation, The University of Michigan, 2010); Dea H. Boster, *African American Slavery and Disability: Bodies, Property, and Power in the Antebellum South, 1800-1860* (New York and Oxon: Routledge, 2013). For now classic works on disability in colonial and early national America, see in particular: Mary Ann Jimenez, *Changing Faces of Madness: Early American Attitudes and Treatment of the Insane* (Hanover and London: Brandeis University Press by University Press of New England, 1987); Nora Groce, *Everyone Here Spoke Sign Language: Hereditary Deafness on Martha’s Vineyard* (Cambridge, MA: Harvard University Press, 1985); Deborah Stone, *The Disabled State* (Philadelphia: Temple University Press, 1984).

some type of impairment and that everyone will undergo periods of incapacity over the course of their lifetimes. With the many damaging epidemics and limited capabilities of healing and medical practitioners in the colonial and early national periods, the number of people who were sick or impaired at the time was likely much higher. Thus, historians miss much when they fail to account for these experiences. Furthermore, scholars have shown how the concept of disability has shaped political events, social relations, and power dynamics at large. Douglas Baynton, for example, has demonstrated that notions of disability underlay nineteenth- and twentieth-century debates about women's suffrage, African American freedom, and immigration restrictions. While opponents of equality used disability as a rationale for denying people certain rights, advocates of equality rejected that they and their allies were disabled and therefore deserving of discrimination. Focusing on disability thus might enable historians to more accurately capture early American life and better analyze political, social, and economic circumstances and events.<sup>9</sup>

The study of early American disability can further contribute to the discipline of disability studies, where scholars have been equally slow to investigate topics and themes before approximately 1840. With the exception of the recent publications noted previously, most work in the field has focused

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<sup>9</sup> For estimates of the number of disabled people in the United States and the world, see: "Nearly 1 in 5 People Have a Disability in the US, Census Bureau Reports," United States Census Bureau, July 25, 2012, accessed May 20, 2016, <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html>; "Disability Overview," The World Bank, April 4, 2016, accessed May 20, 2016, <http://www.worldbank.org/en/topic/disability/overview>. 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, 33-57. Also see: Catherine Kudlick, "Disability History: Why We Need Another 'Other,'" *American Historical Review* 108, 3 (June 2003), 763-793.

on the late nineteenth, twentieth, and twenty-first centuries. Consider three well-respected essay collections: *The Disability Studies Reader*, edited by Lennard J. Davis; *The New Disability History*, edited by Paul K. Longmore and Lauri Umansky; and *Disability Histories*, edited by Susan Burch and Michael Rembis, published in 1997, 2001, and 2014 respectively. All of the collections feature important essays on a variety of topics, from feminist theories of disability to visual representations of disability and disability and abortion. Yet, all also concentrate heavily on the late-nineteenth and twentieth centuries, entirely overlooking disability in colonial America and including just a few mentions—or, in the case of *Disability Histories*, just one essay—about people and events in America before 1840. *The Disability Studies Reader* does include two essays on ancient Greece and Rome and three on early modern Europe, which provide useful parallels for the historian interested in the early American experience. In addition, *Disability Histories* features two chapters on antebellum America, focusing on the period from about 1830 to 1860.<sup>10</sup>

Greater attention to disability in early America, however, might fruitfully expand disability studies by further demonstrating the historical specificity and

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<sup>10</sup> Lennard J. Davis, ed., *The Disability Studies Reader* (New York and London: Routledge, 1997); Longmore and Umansky, eds., *The New Disability History*; Susan Burch and Michael Rembis, eds., *Disability Histories* (Urbana, Chicago, and Springfield: University of Illinois Press, 2014). As the essays in *The Disability Studies Reader* indicate, scholarship on disability in early modern Europe has been more extensive; see, for example: David M. Turner, *Disability in Eighteenth-Century England: Imagining Physical Impairment* (New York and London: Routledge, 2012); Anne Borsay, "Returning Patients to the Community: Disability, Medicine, and Economic Rationality before the Industrial Revolution," *Disability and Society* 13, 5 (1998), 645-664; Geoffrey L. Hudson, "Disabled Veterans and the State in Early Modern England," in *Disabled Veterans in History*, ed. David A. Gerber (Ann Arbor: University of Michigan Press, 2000), 117-144; Catherine Kudlick, "Disability and 'Divorce': A Blind Parisian Cloth Merchant Contemplates his Options in 1756," in *Gendering Disability*, eds. Bonnie G. Smith and Beth Hutchison (New Brunswick, Rutgers University Press, 2004).

contingency of both past and contemporary conceptions of disability. Research on colonial and early national disability, including this dissertation, has so far suggested that the meaning of disability during these periods was highly variable and contested, providing some impaired people with the opportunity to negotiate their cases and advocate either for or against the designation. In addition, studies have proposed that physical and cognitive incapacities may have been less stigmatized and penalized, particularly in the colonial period. Such insights hold the potential to disrupt notions that impairment has always been directly correlated with disability and served as a rationale for condemnation and exclusion. In addition, greater historical context reveals the complex power dynamics embedded in the development of disability as a concept and a category. By recognizing a longer history, scholars of American disability can not only avoid ‘whiggish’ historical interpretations—such as the often cited “from institutions to independence”—but also share an empowering message: If impairment has not always been stigmatized and the definitions of disability have been fluid, the discrimination and censure that many disabled people experience today can change, hopefully for the better.<sup>11</sup>

Scholars of disability have also been reluctant to pursue intersections between their field and related work in the history of medicine, another

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<sup>11</sup> See, for example: Barbara L. Floyd, ed., *From Institutions to Independence: A History of People with Disabilities in Northwest Ohio* (Toledo, OH: University of Toledo Press, 2010). For discussions of the unstable definition of disability, see: Susan Wendell, *The Rejected Body: Feminist Philosophical Reflections on Disability* (New York and London: Routledge, 1996); Lennard J. Davis, “Dr. Johnson, Amelia, and the Discourse of Disability” in “Defects”: *Engendering Disability in the Eighteenth Century*, eds. Felicity Nussbaum and Helen Deutsch (Ann Arbor: University of Michigan Press, 1999); Lennard J. Davis, *Enforcing Normalcy: Disability, Deafness, and the Body* (New York and London: Verso, 1995).

discipline that this dissertation draws from and seeks to address. For many disability scholars, the prevalence of medical thinking and the power of medical practitioners have been primary contributing factors in the development of negative attitudes and discriminatory policies towards disabled people. As Richard Scotch explains, the so-called “medical model of disability” is “based on deficit, with the assumption that impairment affects every aspect of the life of people with disabilities, invariably in a negative manner.” Disability researchers have thus tended to eschew medically-oriented methodologies and focus instead on the myriad social and cultural factors—from prejudices to physical barriers—that contribute to creating disability. “Medicine [is] only one piece of the puzzle,” Catherine Kudlick asserts. “Work in disability history invites us to think that a majority of disabled individuals has a rich, interesting, significant history outside of institutions, healers, treatments,” she continues, “a history where they enjoy agency not just as patients or cure-seekers, but rather as people living differently in the world.” Rejecting medical approaches and privileging social and cultural causes of disability, then, histories of disability have typically been devoid of doctors, even though these practitioners have, for better or worse, played crucial roles in lives of many disabled people.<sup>12</sup>

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<sup>12</sup> Richard K. Scotch, “Medical Model of Disability,” in Susan Burch, ed., *Encyclopedia of American Disability History* (New York: Facts on File, 2009), 1:330; Catherine Kudlick, “Comment: On the Borderland of Medical and Disability History,” *Bulletin of the History of Medicine* 87, 4 (Winter 2013), 545. Also see: Beth Linker, “On the Borderland of Medical and Disability History: A Survey of the Fields,” *Bulletin of the History of Medicine* 87, 4 (Winter 2013), 499-535; Catherine Kudlick, “Disability History and History of Medicine: Rival Siblings or Conjoined Twins?” Keynote Address, Social History of Medicine Conference, Glasgow Scotland, September 2008, accessed May 20, 2016, [https://www.academia.edu/1634239/\\_Disability\\_History\\_and\\_History\\_of\\_Medicine\\_Rival\\_Siblings\\_or\\_Conjoined\\_Twins\\_](https://www.academia.edu/1634239/_Disability_History_and_History_of_Medicine_Rival_Siblings_or_Conjoined_Twins_.).

Integrating physicians into disability histories and finding productive points of overlap between disability studies and the history of medicine, however, can not only more accurately represent the experiences of some disabled people, but also expose the role of medicine in creating and authorizing conceptions of disability. Susan Wendell, among others, has criticized scholars of disability for focusing primarily on “healthy” disabled people as a way to promote the social model of disability and avoid discussing medical intervention. “Some people with disabilities *are* sick, diseased, and ill,” she writes. “Social constructionist analyses...can reduce attention to those disabled people whose bodies are highly medicalized because of their suffering, their deteriorating health, or the threat of death.” Greater intersection between disability studies and the history of medicine may better account for this “unhealthy” disabled population. In addition, attending to medicine may provide scholars of disability with insight into how and why medical understandings of disability came to exist and persist with such force in America during the nineteenth and twentieth centuries. Furthermore, such considerations might reveal how physicians have distinguished between capacity and incapacity and how their perceptions have shaped social ideas about disability and relations between disabled people. Such investigations, it is to be argued, are crucial to critiquing medical approaches to disability in the first place.<sup>13</sup>

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<sup>13</sup> Susan Wendell, “Unhealthy Disabled: Treating Chronic Illnesses as Disabilities,” *Hypatia* 16, 4, Feminism and Disability, Part 1 (Autumn 2001), 18; Kudlick, “Comment: On the Borderland of Medical and Disability History,” 554.

Historians of medicine, for their part, have also traditionally neglected studies of chronic debility and disablement, focusing instead on diseases, therapies, and the relationships between doctors and patients in discretely medical settings. Beth Linker has advanced three reasons for their general disregard of disability. First, she suggests, quoting Roy Porter, that medical historians have overlooked disability because it is “neither sexy nor sensational.” Infectious diseases and epidemics lend themselves to “elaborate rationalizations, victim-blaming tropes, and moralizing meanings uniting disease, danger, and destiny,” she explains, but disability demands a less flashy approach that attends to the day-to-day lives of people with ongoing conditions. Second, Linker argues that medical historians have resisted studying disability because of its unstable meaning. As compared to disease—which has an onset, symptoms, and, sometimes, a cure—disability is a messy and indistinct category, an “ill-defined symptom complex that, according to biomedicine, could be brought about by a multitude of disease processes.” Researching disability thus seems challenging and is often avoided. Finally, Linker notes the financial and institutional incentives for disease-centered histories. Twentieth-century medical research has focused on disease and disease causation, she declares. As a result, historical studies of such topics have been better received in the academy and more amply funded, resulting in the privileging of disease over disability in the field.<sup>14</sup>

Examining doctors and disability in early national America, however, can profitably broaden the scope of medical histories. Diseases often result

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<sup>14</sup> Linker, “On the Borderland of Medical and Disability History: A Survey of the Fields,” 515, 516.

not in death but in long-term impairment and incapacity, especially in earlier periods when medical knowledge was less advanced and treatments were less effective. By accounting for disability, then, scholars can more accurately represent many patients' experiences with illness and its aftermath. In addition, such research might offer greater insight into patients' relationships with medical practitioners as well as with caregivers and other healthcare workers, who often provide nursing and treatment long after the disease phase of the ailment subsides. Focusing on disability might also encourage historians to investigate physicians' work outside of the clinic, particularly their service as assessors of disability in various state, legal, institutional, and cultural venues. For some doctors, such as Theodric Romeyn Beck who is discussed further in Chapter 8, these civic positions were the mainstay of their careers. Acknowledging and analyzing such experiences thus better represents the diverse labors of some providers and reveals how these public positions contributed to the widespread acceptance of medical authority.<sup>15</sup>

Furthermore, by attending to disability, historians of medicine may be led to reconsider established timelines of medical professionalization. Most scholars contend that American physicians' efforts to professionalize did not gain traction until the late nineteenth century and it was not until the twentieth century that they were recognized as powerful, prestigious, and wealthy experts. During the nineteenth century, these scholars note, "regular" doctors, who were professionally trained and licensed, experienced stiff competition from healers from different sects who performed a variety of lay and

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<sup>15</sup> Ibid, 529.

homeopathic remedies. Medical societies, such as the American Medical Association, struggled to unite the profession and gain meaningful political influence. In addition, many Americans showed resistance to seeking professional healthcare, preferring instead to deal with sickness and impairment independently in the home. These challenges, historians of medicine argue, were particularly profound in the 1830s and 1840s, when public sentiment turned against regular practitioners and many states retracted laws that protected medical licenses. "During the Jacksonian period," Paul Starr declares, physicians' "claims to privileged competence evoked a sharp backlash that crippled their [professional] ambitions for the next half century."<sup>16</sup>

Yet, examining disability exposes alternative venues in which doctors achieved professional recognition in the late eighteenth and early nineteenth centuries, which endured despite the struggles of the 1830s and 1840s. As this dissertation demonstrates, physicians gained prominent positions as adjudicators of the category of disability in various state, legal, institutional, and cultural arenas in the Early Republic. Struggling to create stable classifications that could guide the distribution of disability-based benefits and exclusions, many Americans turned to doctors to navigate the murky terrain of

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<sup>16</sup> Paul Starr, *The Social Transformation of American Medicine: The Rise of a Sovereign Profession and the Making of a Vast Industry* (Basic Books, 1982), 30. For more on the medical profession in nineteenth-century America, see: William G. Rothstein, *American Physicians in the 19<sup>th</sup> Century: From Sects to Science* (Baltimore: The Johns Hopkins University Press, 1985); W. F. Bynum, *Science and the Practice of Medicine in the Nineteenth Century* (New York: Cambridge University Press, 1994); John Duffy, *From Humors to Medical Science: A History of American Medicine* (Urbana: University of Illinois Press, 1993). For more on professional status and professionalization, see: Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (Berkeley: University of California Press, 1977); Keith M. Macdonald, *The Sociology of the Professions* (London: SAGE Publications, Ltd., 1995).

disability and impose greater coherence and clarity. Even more, Americans' desires for medical expertise on disability did not diminish during the 1830s and 1840s; if anything, they increased. As regular physicians were unsuccessfully lobbying for licensing protections and struggling to define the profession in relation to untrained "irregular" healers, they were nevertheless obtaining even more influential positions as determiners of disability—advising state administrators, judges, members of mutual aid societies, and showmen who managed the exhibitions of physically-impaired artists. Doctors' roles as professional experts on disability encourage historians to broaden the contexts in which they look for evidence of professional status and complicate standard chronologies of medical professionalization more generally.

"The Constitution of Disability" begins in the colonial period when the nascent political and social categories of disability based on impairment were variably applied and ministers, not physicians, were seen as experts on physical and cognitive affliction. Part I turns to the construction of disability classifications in early national law and government. The first two chapters explore disability as a rationale for social welfare, examining the provision of federal and state pensions to wounded Revolutionary War veterans and hearing and visually impaired young adults who wanted to attend school. The third chapter studies disability as a means of restriction and exclusion, investigating the enactment and enforcement of state laws proscribing the rights of cognitively disabled people to vote, marry, immigrate, hold and will property, obtain residency, and live independently.

Part II studies the development and application of categories of disability in the early national market economy. In the fifth chapter, mutual aid

and insurance society members construct their own definitions of disability and use them to regulate society admission and distribute benefits. In the sixth and seventh chapters, physically-impaired artists and inventors upend the association between disability and laboring incapacity by emphasizing the enabling, rather than disabling, consequences of impairment, captivating customers and garnering profit. Market changes, however, ultimately limited these artists' and inventors' professional opportunities, in turn undermining their alternative notions of impairment and disability, as showmen and physicians gained control over these industries.

Each chapter in Parts I and II highlights the controversies about the meanings of disability that eventually led bureaucrats, judges, and many everyday Americans to ask doctors to preside over the designation of disability. The eighth and final chapter focuses exclusively on physicians' involvement, exploring in particular their contributions to the emerging field of medical jurisprudence that aimed to position doctors as medical experts in numerous governmental, legal, institutional, and social contexts. This chapter further considers the consequences of disability as a medical category for the professionalization of medicine. The conclusion studies the inclusion of disability in the 1840 census and introduces a new group of experts, statisticians, who came to join doctors as authorities on disability in the remainder of the nineteenth century.

The diversity of topics illuminating the emergence of disability in the Early American Republic rest on an equally varied source base. The first four chapters rely heavily on governmental records, legal texts, court case transcripts, and administrative and personal correspondence. The chapters in

Part II meanwhile utilize institutional minutes and accounts, newspaper advertisements, patent documents, business records, visual art, and surviving examples of assistive furniture. Doctors' writings and reports feature prominently in every chapter, most especially the eighth where treatises about medical jurisprudence and professionalization come to the fore. Throughout, genealogical sources—such as census records, immigration documents, and family histories—aid in the recovery of the lives and experiences of impaired and disabled people.

While the subjects and sources are varied, this dissertation focuses primarily on New England and the Mid-Atlantic. As a locus of political authority and economic power during the period with ample surviving sources, the regions have proved ideal for studying the formation of classifications of disability in the early national bureaucracy and economy. In addition, the ways in which disability was categorized in New England and the Mid-Atlantic often set the stage for similar developments in other regions of the country, suggesting broader geographic implications. The state constitutional amendment that disenfranchised cognitively disabled people in Massachusetts in 1821, discussed in Chapter 4, for example, was soon implemented, often with strengthened provisions, by numerous other states, from Louisiana to California.

Events in New England and the Mid-Atlantic surely cannot illuminate how disability became a meaningful, medicalized political, legal, institutional, and cultural category in the Early American Republic writ large. Nevertheless, attention to affairs in these regions provide a useful place to start that will hopefully inspire future study of other areas of the country and beyond.

Chapters 6 and 7, in fact, signal to this anticipated widening of the geographic lens, as they follow performers and products of and for disability from New England and the Mid-Atlantic as they reached new consumer economies in the southern and western United States and in Europe, the Caribbean, South America, and other regions of North America.

Ultimately, “The Constitution of Disability” demonstrates how Americans created, negotiated, and defended administrative, institutional, and cultural classifications of disability in the Early American Republic. In venues as varied as asylums and district courts, mutual aid society meeting rooms and the shops of inventors of assistive technologies, bureaucrats, judges, institutional managers, and everyday individuals engaged in the challenging processes of defining disability, implementing metrics for its identification and evaluation, and regulating and resisting these bounds. As Americans turned to physicians to preside over disability and lend the category greater structure and substance, doctors acquired elevated professional standing and disability assumed the medical lens it often retains today.

## Chapter 1: Physical and Intellectual Impairment in Colonial America

In 1766, the English jurist and politician William Blackstone described some of the ways that sickness and impairment figured into English law and governance in his renowned four-volume work, *Commentaries of the Laws of England*. He outlined the responsibility of the state to provide social welfare services and subsidies to wounded soldiers as well as the “deserving” poor, which included those “sick...impotent, old, blind, and such other, being poor and not able to work.” Blackstone also discussed occasions in which the government might assume custody over impaired people in order to protect their welfare. “The king shall have ward of the lands of natural fools,” he wrote, “taking the profits without waste or destruction...in order to prevent such idiots from aliening their lands, and their heirs from being disherited.” In addition, Blackstone noted the legal impediments arising from cognitive debility. “Want of reason” voided a marriage contract, although it was not grounds for divorce if occurring later in life. People found to be “lunatics” and “idiots” also could not inherit property and titles or hold public office.<sup>17</sup>

Blackstone’s *Commentaries* begins to suggest how categories of disability based on impairment were framed in early modern English law and,

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<sup>17</sup> William Blackstone, *Commentaries on the Laws of England, Book the First* (Oxford: Clarendon Press, 1765), 404, 409, 348-349, 293-296, 449, 451, 427, 189. Also see: John Brydall, *Non Compos Mentis: Or, the Law Relating to Natural Fools, Mad-Folks, and Lunatick Persons, Inquisited, and Explained, for Common Benefit* (London: Richard and Edward Atkins, 1700). For more on Blackstone, see: Wilfrid Priest, *William Blackstone: Law and Letters in the Eighteenth Century* (Oxford and New York: Oxford University Press, 2008); Wilfrid Priest, ed., *Blackstone and his Commentaries: Biography, Law, History* (Oxford: Hart Publishing, 2009); Wilfrid Priest, ed., *Re-Interpreting Blackstone's Commentaries: A Seminal Text in National and International Contexts* (Oxford: Hart Publishing, 2014); Mary Sarah Bilder, Maeva Marcus, and R. Kent Newmyer, eds., *Blackstone in America: Selected Essays of Kathryn Preyer* (Cambridge and New York: Cambridge University Press, 2009).

accordingly, how some colonial American jurists and bureaucrats responded to people they deemed to be ailing or infirm. For example, numerous colonial administrations, from Connecticut to Virginia, enacted pension schemes for veterans who were injured, ill, or elderly. In addition, some colonies, such as Massachusetts Bay, arranged custodians for people whom judges found to be cognitively incapable and issued poor relief subsidies to those who infirmities precluded their labor and lacked adequate familial support.

Only less prescriptive texts, however, can reveal the often occasional, episodic, even haphazard implementation of these measures, which allowed the majority of colonial Americans with impairments to live out their lives experiencing little state and legal intervention on account of their corporeal conditions. In some cases, for example, courts selectively enforced laws on the books. In other cases, they strayed from English precedent and allowed impaired people greater freedoms than they would have had in England. In addition, cultural factors played a role. Many colonial Americans had a high degree of tolerance for unusual characteristics and behaviors as well as deeply-rooted cultures of family and community-based accommodation, rendering fewer people seen as physically and intellectually atypical in the first place.<sup>18</sup>

This chapter explores the nascent political and social categories of disability based on impairment in America prior to the Revolution. As

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<sup>18</sup> For more on colonial American legal culture, see: William E. Nelson, *The Common Law in Colonial America, Vols 1-3* (New York: Oxford University Press, 2008, 2012, 2016); Mary Sarah Bilder, *The Transatlantic Constitution: Colonial Legal Culture and the Empire* (Cambridge, MA and London, England: Harvard University Press, 2004); Lawrence Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), Part I; Bilder, Marcus, and Newmyer, eds., *Blackstone in America*.

Blackstone's *Commentaries* indicates, in early modern English law, some people with physical and cognitive incapacities were deemed to be "disab[led] by the act of God"—a distinction that either entitled them to governmental aid and protection or disqualified them from certain legal rights. Although the American colonies tended to follow English precedent and adopt many of these provisions, evidence also suggests that people with impairments were rarely classified as disabled or treated accordingly. Not all of the disability-based benefits and exclusions that Blackstone outlined were executed by colonial administrations. Some were applied more flexibly and conditionally than English law prescribed.<sup>19</sup>

In addition, cultural attitudes towards sickness and indisposition shaped legal implementation. Colonial Americans typically viewed bodily debility as an ordinary and expected aspect of everyday life. Those with such conditions were thus less often distinguished from the general populace and marked as needful of separate benefits and sanctions. The limited enforcement of categories of disability also required less formalized identification and evaluation procedures. In colonial America, city and colony officials, judges, ministers, and everyday people could all serve as authorities on questions of impairment and disability, not only doctors as would occur in later periods. The chapter concludes by examining the political and economic factors that led to greater categorization of disability in the Early Republic.

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<sup>19</sup> "Disab[led] by the act of God" is a quotation from Edward Phillips, *The New World of Words: Or, Universal English Dictionary, Sixth Edition* (London: J. Phillips, A. Rhodes, and J. Taylor, 1706), "Disability," fourth definition.

Although scholarship on disability in the American colonies is still limited, this chapter utilizes available texts—along with related work on health, medicine, law, governance, poverty, family structure, and religion—to provide an overview of the legal, political, and social responses to impairment during the period. Legislative records, city and colonial accounts, and personal diaries and letters are also examined. Ultimately, these sources reveal the limited nature and implementation of categories of disability based on corporeal incapacity prior to the Revolution and their lack of control by medical professionals.

### *Disability and Impairment in Colonial Law and Governance*

American jurists and bureaucrats accounted for the potentially debilitating effects of physical and cognitive impairment by enacting four major provisions, all loosely based on English precedent: military pensions; poor relief; guardianship; and the exemption of intellectually incompetent people from criminal culpability. This section details the primary facets of these measures, which formed the basis of the colonial American legal and governmental response to corporeal incapacity. The next section, however, discusses the various legal, political, and cultural factors particular to the colonies that shaped and limited these provisions' implementation, ultimately enabling many impaired Americans, for better or worse, to live without significant governmental intervention.

Colonial administrations issued pensions to wounded soldiers during the earliest years of settlement. In 1636, the Plymouth Colony resolved that "if

any man shalbee sent forth as a souldier and shall returne maimed hee  
shalbee majntained competently by the Collonie during his life." Accordingly,  
in subsequent years, Thomas Baxter, a serviceman "whoe ha[d] lost the use  
of one of his hands," received an allowance of twenty pounds, and Nathaniel  
Hall, a "decriped" veteran, was granted at least six subsidies as well as a  
license to sell "liquor by retaile," which was contrary to the laws in his  
hometown of Yarmouth. After the passage of Plymouth's "invalid" pension  
law, other colonies began to enact similar provisions. In 1644, the Virginia  
House of Burgesses extended relief to "hurt and maymed and disabled"  
veterans of the third Anglo-Powhatan War. In addition, in 1699,  
Massachusetts Bay stipulated that "all such souldiers and seamen that have  
been wounded in their majesties' service" would be entitled to "yearly  
pensions" out of the "publick treasury." On the eve of the Revolution, at least  
seven colonies had well established pension schemes and others were  
accustomed to dispensing relief on an individual basis.<sup>20</sup>

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<sup>20</sup> David Pulsifer, ed., *Records of the Colony of New Plymouth in New England, Laws 1623-1682* (Boston: William White, 1861), 106; Nathaniel B. Shurtleff, ed., *Records of the Colony of New Plymouth in New England, Court Orders* (Boston: William White, 1856), 4:65, 112, 130, 132, 161; 5:239-240; William Walter Hening, *The Statutes At Large: Being a Collection of all the Laws of Virginia from the First Session of the Legislation in the Year 1619* (New York: R & W & G Bartow, 1823), 287; "An Act for Levying Souldiers," in *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay, Vol. I* (Boston: Wright and Potter, 1869), 133-135. For more on military pensions in colonial America, see: William Henry Glasson, "History of Military Pension Legislation in the United States," (Ph. D. Dissertation, Columbia University, 1900), ch. 1. For more on military pensions in early modern Europe, see: David A. Gerber, ed., *Disabled Veterans in History* (Ann Arbor, MI: University of Michigan Press, 2000), esp. Geoffrey Hudson, "Disabled Veterans and the State in Early Modern England," and Isser Woloch, "A Sacred Debt": Veterans and the State in Revolutionary and Napoleonic France;" Geoffrey Hudson, "Ex-servicemen, War Widows, and the English County Pension Scheme, 1593-1679" (D. Phil. Dissertation, Oxford University, 1995); Caroline Nielsen, "The Chelsea Out-Pensioners: Image and Reality in Eighteenth-Century and Early Nineteenth-Century Social Care (D. Phil. Dissertation, Newcastle University, 2014); Philip Thomas, "The Elizabethan Privy Council and Soldiers at York in a Time of War: Deserters, Vagrants, and Crippled Ex-Servicemen," *York Historian* 13 (1996), 15-24.

Colonial pension programs were premised on preexisting systems in England, which dated to 1593. Following English models, colonies tended to grant subsidies to veterans who were “disabled in body for worke,” compensating those whose injuries prevented them from laboring and supporting themselves and their families. Additionally, colonies typically granted allotments according to veterans’ “degrees” of incapacity, extending the highest amounts to those with the severest wounds or who were in the greatest need. The “Act for Relieving Such as Shall Be Maimed,” passed in Rhode Island in 1718, is exemplary on both accounts. The act specified that soldiers who were “Disabled by Loss of Limb or Limbs, or otherwise from getting a livelihood for himself and Family” would be “looked after and healed at the Colony’s charge and shall have an Annual Pension allowed him out of the General Treasury.” In addition, the act held that town councils throughout the colony would oversee veterans’ allowances, “supply[ing] such Persons as they shall stand in need thereof.”<sup>21</sup>

Distinguishing disability in terms of labor and degree was also a feature of colonial poor relief, the second measure enacted in part to alleviate the potentially disabling effects of physical and intellectual incapacity. Like in England, colonial governments tended to treat those with chronic conditions as part of the “deserving” poor, recognizing that they could not work to earn

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<sup>21</sup> “Journal of the House of Lords: April 1593,” *The Journals of all the Parliaments During the Reign of Queen Elizabeth*, 463-467; “An Ordinance for Reliefe of Maimed Souldiers and Marriners...” in *A Declaration of the Lords and Commons Assembled in Parliament: Concerning the Disbanding of the Army: With Instructions for the Same...* (London: John Wright, 1647), 19; “An Act for Relieving Such as Shall be Maimed, and the Widows, Parents or Relations of Such as Shall be Killed in the Colony’s Service,” 1718, *Acts and Laws of His Majesty’s Colony of Rhode Island, and Providence-Plantations, In New England, in America* (Newport, RI: Widow Franklin, 1745).

their livings and issuing them subsidies according to their needs. In the seventeenth century, colonies typically extended aid on a case-by-case basis. In 1655, for example, Providence Plantations granted “neighbor Pike” fifty shillings “for helps in this his sad Condition of his Wives distraction,” while, in the 1640s and 1650s, Massachusetts Bay gave John Haydon at least seven allotments for “some relieve in respect of his distracted or possessed child.” During the eighteenth century, colonies explicitly incorporated people with physical and cognitive disorders into poor relief legislation. In 1702, for instance, Connecticut compelled all town constables and overseers of the poor “to take effectual care, and make necessary Provision, for the relief, support, and safety” of “any person to be naturally wanting of understanding, so as to be uncapable to provide for him, or her self.” In 1739, the colony amended the act to include anyone who “shall through Age, Sickness or otherwise, be rendered Impotent and unable to Support and Maintain themselves.”<sup>22</sup>

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<sup>22</sup> *The Early Records of the Town of Providence* (Providence, RI: Snow & Farnham City Printers, 1892), 2:89; Nathaniel B. Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England* (Boston: William White, 1854), 2:199, 3:140, 232, 329, 363, 4/1:208, 244; both cited in Larry D. Eldridge, “Crazy Brained”: Mental Illness in Colonial America,” *Bulletin of the History of Medicine* 70, 3 (1996), 374. “Ideots, and Distracted Persons,” *Acts and Laws, of His Majesties’ Colony of Connecticut in New-England* (Boston: Bartholomew Green, and John Allen, 1702), 54. For a similar measure in Massachusetts Bay, see: “An Act for the Relief of Ideots and Distracted Persons,” 1693-1694, *Acts and Resolves Passed by the General Court* (Boston: Secretary of the Commonwealth, 1694), 151-152. “An Act in Addition to and Explanation of the Law, Entituled, An Act in Addition to and for the Explaining of the Law referring to Idiots,” *Acts and Laws, of His Majesties’ Colony of Connecticut in New-England, Passed by the General Assembly May 1716-1749* (Hartford: Albert C. Bates, 1919), 468. For more on poverty and poor relief in colonial America, see: Billy G. Smith, *Down and Out in Early America* (University Park, PA: The Pennsylvania State University Press, 2004); Cornelia H. Dayton and Sharon V. Salinger, *Robert Love’s Warnings: Searching for Strangers in Colonial Boston* (Philadelphia: University of Pennsylvania Press, 2014); Ruth Wallis Herndon, *Unwelcome Americans: Living on the Margin in Early New England*; Billy G. Smith, *The “Lower Sort”: Philadelphia’s Laboring People, 1750-1800* (Ithaca NY: Cornell University Press, 1990); Barbara L. Bellows, *Benevolence Among Slaveholders: Assisting the Poor in Charleston, 1670-1860* (Baton Rouge: Louisiana State University Press, 1993); Keith Krawczynski, *Daily Life in the Colonial City* (Santa Barbara, CA, Denver, CO,

Poor relief subsidies provided many people with much needed support as they coped with sickness and injury; however, these measures also prompted the exclusion of others with bodily debilities. In colonies such as Massachusetts Bay, towns had the duty to support their poor ailing residents, while the colony was responsible for relieving those without legal settlement in a town. Generally, when a sick or needy person required immediate attention in a locale where they lacked residency, local officials would arrange for aid and then petition the colony or the town where the individual hailed from for reimbursement. Both town and colonial administrators worked to limit the costs of poor relief. Towns often “warned out”—or communicated ineligibility for monetary aid—newcomers with apparent infirmities out of fear that they would become reliant on town support. Of the 688 people that Robert Love, a warner in Boston on the eve of the Revolution, notified, for example, about 100 showed signs of physical or intellectual incapacity, from lost eyesight to insanity. Colonies also found ways to reduce the expense of the ill and impaired. Beginning in 1701, Massachusetts Bay denied entry to “any passenger [on an arriving ship] so brought to be impotent, lame, or otherwise infirm” unless they could prove financial stability. Government subsidies on account of inability thus worked two ways: supporting those who were wealthy or legal residents and alienating poor “strangers” to the colony.<sup>23</sup>

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Oxford, England: Greenwood Press, 2013), ch. 8; Bruce C. Daniels, “Poor Relief, Local Finance, and Town Government in Eighteenth-Century Rhode Island,” *Rhode Island History* 40 (1981), 86-87.

<sup>23</sup> Dayton and Salinger, *Robert Love’s Warnings*, 1, 140-143; “An Act Directing the Admission of Town Inhabitants,” 1701, *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*, Vol. 1 (Boston: Wright & Potter, 1869), 451-453.

The third pillar of colonial administrations' response to sickness and bodily incapacity was guardianship, which also simultaneously alleviated some of the financial challenges of impairment and denied those placed under custody some of their legal rights. Following English precedent, colonies appointed guardians to people whom judges deemed to be unable to manage their personal and financial affairs. The arrangement was meant to benefit the ward by providing for their welfare, inheriting descendants by not squandering their property, and the town by not having to provide for the ward in case of poverty. Although such appointments could be appealed if the person regained their lost capacities, while under custody they were barred from bargaining, transacting business, suing, or testifying in court.<sup>24</sup>

Guardianship arrangements became more common over the course of the colonial period. In the seventeenth century, they were relatively rare, although recorded cases date as early as 1622. In that year in Virginia, Benomi Buck was placed under guardianship as an orphan; when he turned twenty-one in 1637, his custodians petitioned to extend the arrangement because Buck was "in no way able to governe himselfe." In the eighteenth century, colonies began to issue guardianships more often and to enact legislation explicating the rights and responsibilities of wards and custodians. The Boston probate court, for example, placed no one under guardianship for cognitive inability before 1737. That year, Massachusetts Bay passed a law detailing how people were to be assessed for custody and how caretakers

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<sup>24</sup> For more on guardianship and mental incompetence, see: Jimenez, *Changing Faces of Madness*, 57-59; Dayton, "The Oddest Man that I Ever Saw;" Lawrence M. Friedman, Joanna L. Grossman, and Chris Guthrie, "Guardians: A Research Note," *American Journal of Legal History* 40 (April 1996), 146-166.

should govern their estates. Between 1737 and 1776, the Boston probate court then increased their number of guardianship appointments, making arrangements for sixteen men and ten women.<sup>25</sup>

The final way that American jurists and bureaucrats accounted for impairment in colonial law and governance was by exempting intellectually incompetent people from the criminal consequences of their actions. Although Blackstone did not explicitly mention this accommodation in *Commentaries*, the notion that people could not be punished for crimes that were beyond their comprehension was a mainstay of English law, dating to at least 1324. In the colonies, legislatures approved similar measures. In 1641, Massachusetts Bay resolved that “ideots [and] Distracted persons shall have such allowances, and dispensations in any case, whether criminal or others, as Religion and Reason require.” Similarly, in 1647, Providence Plantations affirmed that “fooles” and “madd men” could not be sentenced to death for burglary, manslaughter, or murder. Legal records indicate that judges tended

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<sup>25</sup> Richard Neugebauer, “Exploitation of the Insane in the New World: Benomi Buck, the First Reported Case of Mental Retardation in the American Colonies,” *Archives of General Psychiatry* 44, 5 (May 1987), 481, quoted in Parnel Wickham, “Idiocy in Virginia, 1616-1860,” *Bulletin of the History of Medicine* 80, 4 (Winter 2006), 683; Jimenez, *Changing Faces of Madness*, 57; “An Act in Further Addition an Act, Entitled, An Act for the Relief of Idiots and Distracted Persons,” 1737, *Acts and Resolves Passed by the General Court* (Boston: Secretary of the Commonwealth, 1737-1738), 881-882. For an example of intensifying guardianship provisions in Massachusetts, see: “An Act for the Relief of Idiots and Distracted Persons,” 1694, *The Charters and General Laws of the Colony and Province of Massachusetts Bay* (Boston: T. B. Wait and Co., 1814), 276-277; “An Act in Addition to the Act for the Relief of Ideots and Distracted Persons,” 1709, *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay, Vol. I* (Boston: Wright & Potter, 1869), 623; “An Act in Further Addition to an Act Entitled An Act for the Relief of Idieots and Distracted Persons, Made and Passed in the Sixth Year of the Reign of King William and Queen Mary,” 1726, *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay, Vol. I* (Boston: Wright & Potter, 1874), 404-405; “An Act in Further Addition an Act, Entitled, An Act for the Relief of Idiots and Distracted Persons,” 1731, *Acts and Resolves Passed by the General Court* (Boston: Secretary of the Commonwealth, 1731-1732), 622-624; “An Act in Further Addition an Act, Entitled, An Act for the Releief of Idiots and Distracted Persons,” 1737, *Acts and Resolves Passed by the General Court*, 881-882.

to enforce these exemptions. In 1668, for instance, the wife of Robert Wilson of Salem, MA was tried for “absenting herself from the public ordinances,” but her case was “dismissed” because the justices received information that she was “distempered in her head.” Five years later, in 1673, the New York Governor General and Council also pardoned James N. for his “diverse evil deeds and actions” because he was “not in possession of his right reason.” In this case, however, the court inflicted their own lighter punishment, ordering N. to report to a Staten Island magistrate who would “put [him] to work.”<sup>26</sup>

### *Variable Implementation and Enforcement*

Jurists and bureaucrats established military pensions, poor relief, guardianship, and criminal exemptions in the American colonies in ways that largely aligned with English precedent. Nevertheless, evidence suggests that many Americans with impairments never experienced the brunt of these measures or governmental intervention on account of their incapacities more generally. Legal variations particular to the colonies combined with cultural factors to render few people deemed to be impaired, even fewer subjected to the consequent benefits and exclusions, and still fewer unable to negotiate

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<sup>26</sup> William H. Whitmore, ed., *The Colonial Laws of Massachusetts, Reprinted from the Edition of 1672...* (Boston: Rockwell and Churchill, 1890), 152; John Russell Bartlett, ed., *Records of the Colony of Rhode Island and Providence Plantations, in New England* (Providence: A. Crawford Greene and Brother, 1856), 164, 165, 167; *Records and Files of the Quarterly Courts of Essex County, Massachusetts* (Salem, MA: Essex Institute, 1913), 4:88; E. B. O’Callaghan, ed., *Documents Relative to the Colonial History of the State of New York* (Albany: Weed, Parsons, and Company, 1858), 2:689-690. The latter two cases are noted in Eldridge, “Crazy-Brained,” 378-379. Eldridge also suggests that insanity exemptions held less sway for extreme crimes. For a review of the insanity defense throughout history, see: R. J. Gerber, “Is the Insanity Test Insane?,” *American Journal of Jurisprudence* 20 (1975), 111-140.

the terms of their newly assigned status as disabled. Ultimately, the limited implementation and regulation of impairment-related privileges and strictures provided some people with greater freedoms and flexibility than they would have in later periods. Others, however, found their opportunities constrained by the lack of state involvement, their corporal and cognitive limitations—combined with factors of race, gender, and class—making them vulnerable to exploitation without recourse.

One reason that many individuals did not experience the legal and political consequences of impairment was that these measures were gradually enacted over the colonial period. In the earliest years of colonial settlement, such benefits and restrictions were typically imposed on an ad hoc basis. Ailing people and their friends and family might petition their town or colony for monetary aid or to arrange for guardianship. Alternatively, judges might pardon people on account of intellectual debility according to English law and custom. However, it was not until the early eighteenth century that most legislatures began to explicitly incorporate impairment-related provisions into American law. Over the course of the century, these regulations only intensified, as lawmakers made them clearer and more comprehensive. After formerly instituting guardianship for cognitive incompetency in 1694, for example, the Massachusetts General Court passed at least five explanatory or supplemental measures before 1776, most during the 1720s and 1730s. These developments, for better or worse, brought impaired people into greater contact with legal and governmental officials and ensured that they

would be more often subjected to the entitlements and exclusions that applied to their situations.<sup>27</sup>

A second explanation for the limited influence of impairment-related provisions in the colonies was that they were generally imposed on a temporary or conditional basis, allowing those found to be disabled the chance to negotiate the terms of these arrangements or for their release. Guardianship legislation, for example, specified that those under custody could regain control over their personal and financial affairs if they returned to sanity. Many wards used this stipulation to contest their deservingness of guardianship. Often they were successful. In 1760, for example, Samuel Lothrop of Boston petitioned the Quarterly Courts of Suffolk County for his release from custody because he was “worse for being under guardianship.” The Court responded by ordering the city selectmen to visit Lothrop and reassess his cognitive abilities. When they found him to be competent, the Court granted Lothrop’s request. Ten years later, the Massachusetts Bay appeals court made a similar determination on behalf of Benjamin Hall of Medfield. Justices evaluated Hall’s situation by querying Medfield and Boston selectmen about his intellect, morality, and financial capabilities, asking, for example, whether they had ever seen him “spend money unnecessarily,” recklessly bargain, or enter a tavern. When the selectmen responded that

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<sup>27</sup> See footnote 25 and “An Act in Addition to an Act, Passed in the Year Sixteen Hundred Ninety-Four, for the Relief of Idiots and Distracted Persons” 1776, *Acts and Resolves passed by the General Court* (Boston: Secretary of the Commonwealth, 1776), 594-595.

they “imagined [Hall] was capable of conducting his own affairs,” the Court freed him from custody.<sup>28</sup>

Other measures were also designed to be impermanent and thus were often negotiated. Poor laws, for example, noted that individuals would be issued relief as long as they required it or were “restored, to be of sound mind.” Many people receiving subsidies used this condition to advocate for higher allotments or for their release from town custody. In 1740, for instance, John Bate petitioned the Connecticut General Assembly for greater support from his hometown of Sharon because of “the poor and distressing circumstances he is under, by being frozen to that degree that he has lost his toes and is rendered a cripple.” After hearing his appeal, the Assembly ordered four neighboring towns to provide Sharon with “charitable contributions” so that they could raise Bate’s allowances. Military pensions were also dispensed according to the duration and severity of veterans’ incapacities, leaving open the possibility for future compromise. After Bacon’s Rebellion, for example, the Virginia House of Burgesses granted Richard Jones, an injured soldier, five hundred pounds of tobacco and the chance for additional relief if “hee Continue disabled by reason of his saide wounds.” It is unclear whether Jones ever collected on this promise. In colonial America, disability-based privileges and restrictions were not intended to be permanent

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<sup>28</sup> Records of Probate Appeals Courts, 1775-87 (Uncatalogued), Massachusetts State Archives, quoted in Jimenez, *Changing Faces of Madness*, 57-58; Suffolk County Quarterly Courts Records, 1760, Suffolk County Court House, Boston, quoted in Jimenez, *Changing Faces of Madness*, 58.

or inalienable. Applied according to circumstance and need, they retained the potential for contestation and revocation.<sup>29</sup>

Yet a third reason that Americans with impairments tended to experience little state intervention was that two of the consequences for incapacity that Blackstone outlined were never implemented in the colonies. Colonial administrations were silent on the ability of cognitively-incompetent people to both marry and inherit, not passing relevant strictures nor voiding marriages or bequests on account of perceived debility. Court records suggest that people seen as intellectually atypical, including those under guardianship, were expected to and did contract marriages. As early as 1624, the General Court of Virginia heard a case about the “stealing away” and purported marriage of thirteen-year-old Mara Buck, Benomi’s older sister who herself was described as “very dull.” Although the Court ultimately annulled any union that Mara had made because she was under age and had acted without her guardians’ consent, they left open the prospect that she would marry in the future, instructing suitors to first consult with her guardians. Forty years later in Ipswich, MA, the marriage of Peter Cheney to Hannah Noyes, who was “subject to sore fits” as well as “indisposition of body,” also went unchallenged. Although the couple was fined for fornication because their child was born less than nine months after their wedding, justices never

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<sup>29</sup> Charles J. Hoadly, ed., *The Public Records of the Colony of Connecticut, from October, 1735 to October, 1742, Inclusive* (Hartford: Case, Lockwood & Brainard Co., 1874), 310-311; H. R. McIlwaine, ed., *Journals of the House of Burgesses of Virginia, 1659/60-1693* (Richmond, VA: 1914), 70.

questioned their marriage's legitimacy, asking Peter to inform his wife, who could not appear in court on account of her indisposition, of their judgment.<sup>30</sup>

Contrary to English precedent, people with cognitive limitations were also able to inherit in the colonies. Surely, those who were placed under guardianship could not independently receive and manage their bequests because their custodians governed their legal and financial affairs. Nevertheless, there is no indication that the estates of these individuals—and people deemed to intellectually incompetent in general—were denied bequeathed property. Benomi Buck, for one, inherited cattle, which his guardians continued to manage. Over one hundred years later, in 1757, Randolph Jefferson, Thomas Jefferson's brother who was described as "less than mediocre in talent and native intelligence," also received a large inheritance, including over 2,000 acres of land. Evidence further indicates that cognitively impaired Americans could endow property. This privilege accorded with English legal tradition: as long as a testator showed sufficient knowledge of his holdings and bequests, he could write a valid will. This dispensation was formerly recognized in Massachusetts Bay in 1641 when the General Court ordered that any "Ideott or distracted person" could authorize "Any Conveyance or Alienation of land or other estait what so ever" as long as it received the Court's consent. In 1762, Joseph Gorham of Barnstable, MA,

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<sup>30</sup> H. R. McIlwaine, ed., *Minutes of the Council and General Court of Colonial Virginia, 1622-1632, 1670-1676* (Richmond, VA, 1924), 15-16; *Records and Files of the Quarterly Courts of Essex County, Massachusetts*, 3:151-152. The latter case is noted in Eldridge, "Crazy-Brained," 364.

who was described as “Disordered in his Intelectuals,” used this provision to endow his estate to his brother.<sup>31</sup>

Many colonial Americans with impairments were not classified as disabled nor subjected to the relevant legal and bureaucratic strictures because these measures were arranged to be temporary and negotiable and because they were gradually and selectively implemented over time. Social and cultural conditions were just as important. In the colonies, sickness and debility were prevalent, rendering them openly acknowledged as familiar and expected elements of everyday life.

A selection from the detailed diary of Ebenezer Parkman—a minister in Westborough, MA in the mid-eighteenth century—exemplifies the pervasiveness of affliction. Beginning in January 1750, Parkman recorded the numerous infirmities of himself and loved ones. On January 15, he penned “my wife and several Children much indispos’d;” two days later, he noted that the children were “yet indispos’d” but his wife, Hannah, was “about again.” Two weeks later, sickness came again to the Parkman family. On February 2, Parkman described a trip to nearby Concord to tend to his son, Thomas, who was “weaken’d by Vomiting, bleeding at the Nose, and purging.” After fretting about Thomas’ health for the next week, Parkman was then forced to turn his attention to himself. On February 12, he wrote that he had been “taken very

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<sup>31</sup> Wickham, “Idiocy in Virginia,” 682, 687; Will of Peter Jefferson, July 13, 1757, Albemarle County Will Book, 2:32-34, 41-47, available online at: Jefferson Quotes & Family Letters, Monticello, <http://tjrs.monticello.org/letter/1797>; Fawn M. Brodie, *Thomas Jefferson: An Intimate History* (New York: Norton, 1974), 264; Whitmore, ed., *The Colonial Laws of Massachusetts, Reprinted from the Edition of 1672*, 35; Deposition of David Gorham, Appeal of Joseph Gorham’s will, SF129906, quoted in Dayton, “The Oddest Man that I Ever Saw,” 81.

ill" with "Shaking and great pain in his Side." The following day, he recorded "not free of pain and Indisposition;" five days later, simply "Shattered and delirious." During Parkman's suffering, his daughter, Lucy, and son, Bill, also became ill, spitting "bloody matter." Parkman declared it a "Day of Adversity" for the family. In late February, 1750, all of the Parkmans regained their health; however, Parkman continued to chronicle the physical and intellectual disorders of his neighbors and congregants. In the coming years, he counseled Deborah Brigham, who was "under great Trouble of mind;" dined with Samuel Coolidge, who suffered "Distractions and Delirium;" and prayed with James Webber, a "poor Sick Stranger," among many others.<sup>32</sup>

The frequency and ubiquity of bodily incapacity in colonial America, of which Parkman's journal provides just one example, rendered it a predictable, if unwanted, component of daily life. As a result, Americans tended to approach such conditions with understanding and even tolerance, especially in cases in which family, friends, and accepted members of the community were unwell. This does not mean that impaired people were treated leniently; instead, most were expected to labor as long and as much as they were able. When James Parker, a farmer in Shirley, MA, became "very Poorly" in 1770, for example, he still worked to fix a yoke, load 200 "Barril Pools," and attend an arbitration that day. Elizabeth Porter Phelps of Hadley, MA also skimmed milk and made cheese after waking with a "sick headach" and vomiting.

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<sup>32</sup> The Diary of Ebenezer Parkman, American Antiquarian Society and Massachusetts Historical Society, Jan 15, 1750 - Feb 23, 1750, all quoted in Mutschler, "The Province of Affliction: Illness in New England, 1690-1820," 2-4; Jimenez, *Changing Faces of Madness*, 22-23; Clifford K. Shipton, *Biographical Sketches of Those Who Attended Harvard College in the Classes 1722-1725* (Boston: Massachusetts Historical Society, 1945), 326-331; Harriette M. Forbes, ed., *The Diary of Rev. Ebenezer Parkman of Westborough, Mass* (Westborough: The Westborough Historical Society, 1899), 145.

Nevertheless, many colonists were used to accommodating indisposed relatives and neighbors. There was a rich culture of excuse in which people modified their plans and reevaluated their expectations to account for the exigencies of poor health. In addition, family and friends were accustomed to assuming extra labor in cases of debility. When Ebenezer and Hannah Parkman experienced serious illnesses in 1739, at least thirty-five family and community members came to their home to “watch,” meaning that they tended to the Parkmans and performed work essential to the functioning of the household.<sup>33</sup>

Intellectual ailments were also often accommodated. Such was the case with Joseph Moody, a minister in York, ME, when he began displaying unusual behaviors in the 1730s. According to congregants, Moody started to wear a handkerchief over his face, which he only lifted when his eyes were closed or he was facing a wall. He also began turning his back to his flock during worship, miming his prayers, and avoiding eating with others. Despite these unconventional actions, Moody received patience and tolerance from his congregation for three years before they finally removed him as their

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<sup>33</sup> Ethel Stanwood Bolton, “Extracts from the Diary of James Parker of Shirley, Mass.,” *New England Historic and Genealogical Register* 69, 9 (Jan 25-27, 1770), quoted in Mutschler, “The Province of Affliction,” 44; Elizabeth Porter Phelps to Elizabeth Whiting Phelps Huntington, June 13, 1801, box 6, folder 1, in the Porter-Phelps-Huntington Family Papers, property of the Porter-Phelps-Huntington Foundation, on deposit in the Special Collections Department of Amherst College Library, Amherst, MA, quoted in Mutschler, “The Province of Affliction,” 43-44. For the “politics of excuse,” see Mutschler, “The Province of Affliction,” 43-48. For other studies emphasizing toleration and accommodation for some impaired people in colonial America, see: Jimenez, *Changing Faces of Madness*, ch. 2; Kim E. Nielsen, *A Disability History of the United States* (Boston: Beacon Press, 2012), ch. 2; Wickham, “Conceptions of Idiocy in Colonial Massachusetts,” 935-954; Gerald Grob, *The Mad Among Us: A History of the Care of America’s Mentally Ill* (Cambridge, MA: Harvard University Press, 1995); Eldridge, “Crazy-Brained.”

official minister. Even then, churchgoers allowed Moody to preach when he was able, enduring his mimed sermons until his death in 1770.<sup>34</sup>

A striking example of community accommodation of physical incapacity occurred in Martha's Vineyard. An early deaf settler combined with the island's relative isolation from the mainland resulted in unusually high rates of hereditary deafness among the island's population. As a result, large numbers of the island's residents became bilingual in both English and the local sign language, facilitating the integration of hearing impaired people into all aspects of family, work, and community life. In fact, as late as the 1970s, cultural and medical anthropologist Nora Groce found that elderly residents could not recall which childhood friends and relatives had been deaf, as their impairment had not been considered as such or even as an object of note.<sup>35</sup>

Colonial Americans' acceptance of the inevitability of sickness and bodily debility, together with their often extensive networks of familial and community care, allowed many people to escape the governmental and legal distinctions of disability. Understanding and accommodation, however, were less forthcoming for those who lacked established kinship networks or who had limited political, social, and economic power. In these cases, capacity for labor seems to have been the primary factor in determining their reception and support. Impaired servants, slaves, and immigrants, for example, usually avoided social censure and legal and governmental intervention if they could

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<sup>34</sup> John Langdon Sibley, *Sibley's Harvard Graduates* (Cambridge, MA, 1873), 6:261; Jimenez, *Changing Faces of Madness*, 33-34. Also see: Nathaniel Hawthorne, "The Minister's Black Veil" in *Twice Told Tales* (The Floating Press, 2010, first published in 1837).

<sup>35</sup> Groce, *Everyone Here Spoke Sign Language: Hereditary Deafness on Martha's Vineyard*.

continue to perform economically productive work. When Ebenezer Parkman's servant, Asa Ware, broke his ankle in 1774, Parkman simply instructed him to fulfill his contract by "husk[ing] in the Barn." Slaveholders also often recorded the labor of their elderly and debilitated slaves. As Samuel Barker of Charleston, SC wrote in a slightly later period, among his "useless" slaves were: Old Stephen, who "rakes trash;" Old Minda, a "first rate midwife and nurse;" and Peggy, who "cooks for negroes." In addition, visibly impaired immigrants could generally avoid deportation if they demonstrated knowledge of a trade or another means towards financial security. The same was true for those moving between towns and colonies. Nathan Prince, who was expelled from Harvard College for being "Disordered in the Brain," for example, was initially denied legal residency in Boston because he was considered likely to be a public charge. Several months later, however, the selectmen permitted Prince to stay, as he had shown himself able to teach school.<sup>36</sup>

Accommodation wore thin when the debilities of servants, slaves, immigrants, and others precluded their work. In these cases, impaired people could be thrust into contact with legal and governmental authorities or denied welfare services that others received according to colonial law. Either way, lacking kinship networks and the advantages of wealth and/or whiteness, many found it difficult to advocate on their own behalf. Employers often denied servants with severe incapacities healthcare because they expected

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<sup>36</sup> The Diary of Ebenezer Parkman, Oct 12, 1774, quoted in Mutschler, "The Province of Affliction," 167; "List of Negroes," n.d. Estate Books, Samuel G. Barker papers, 34-336-3, South Carolina Historical Society, Charleston, quoted in Boster, "Unfit for Bondage," 111; Sibley, *Sibley's Harvard Graduates*, 6:273, quoted in Jimenez, *Changing Faces of Madness*, 53.

that they would not recover to the point of being economically productive. Such was true for Joseph Quilter, a servant from Ipswich, MA who became sick and “unserviceable” to his employer, William Buckley, in 1661. Buckley refused to nurse Quilter during his ailment, but then demanded that he resume his labor upon recovering. When Quilter refused, Buckley sued him, eventually winning back his services in court. Slave traders also denied care to so-called “refuse slaves” whose poor health prevented their labor and thus their sale. “God knows what we shall do with those that remain,” merchant Henry Laurens wrote in 1755. “Several have extreme[ly] sore eyes, three very puny children, and add to this, the worst infirmity of all others with which six or eight are attended, viz. old age.” Traders often abandoned refuse slaves in entry ports; without access to poor relief, legal counsel, and kinship networks, they were left to die.<sup>37</sup>

Colonies and towns also attempted to forcibly remove ailing immigrants who could not labor for their maintenance. Colonial administrators paid for the return passages of those whom they suspected would become a financial burden to the colony. In 1634, for example, John Winthrop, then Governor of Massachusetts Bay, deported Abigale Gifford, a widow who was “sometymes distracted; & very burdensome,” because she was unable to work and support herself. John Dwyer, who “pretends to be out of his head,” received similar treatment from Boston selectmen in 1769, when they returned him to his last

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<sup>37</sup> *Records and Files of the Quarterly Courts of Essex County, Massachusetts*, 2:275-276, quoted in Mutschler, “The Province of Affliction,” 153-155; Henry Laurens to Samuel & William Vernon, July 5, 1756, in Philip M. Hamer, George C. Rogers, Peggy J. Wehage, eds., *The Papers of Henry Laurens* (Columbia, SC: Published for the South Carolina Historical Society by the University of South Carolina Press, 1970), 238, quoted in Nielsen, *A Disability History of the United States*, 46-47.

place of residence: Portsmouth, NH. Some impaired people repelled these impositions. In 1699, Braintree, MA selectmen offered Josiah Owen twenty dollars to “cleare the Town for ever” of “Ebenezor Owens destracted daughter,” but she resisted and remained in the town for many years. Nevertheless, immigrants had little recourse if officials persisted or brought their cases to court. Cultural acceptance and accommodation of impairment allowed many colonial Americans to negotiate and avoid the legal and governmental repercussions of incapacity according to their best interests. Others, however, experienced a different fate, their corporeal conditions instead exposing their social and political vulnerability.<sup>38</sup>

### *Ministerial Authority and Medical Limitations*

In the colonial period, the assessment of people for pensions, guardianship, and other impairment-related benefits and exclusions was the work of colonial and town administrators and judges. Government bureaucrats oversaw the allocation of pensions to soldiers they deemed to be deserving. Town selectmen and overseers of the poor also maintained authority over poor relief, evaluating those who were aged, sick, or “wanting of understanding” according to their personal metrics and beliefs. In addition, judges held complete control over the appointment of guardianship and

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<sup>38</sup> Richard S. Dunn, James Savage, and Laetitia Yeandle, eds., *The Journal of John Winthrop, 1630-1649* (Cambridge, MA and London, England: The Belknap Press of Harvard University Press, 1996), 139, mentioned in Eldridge, “Crazy-Brained,” 377; Robert Love’s Warning Out Book, 1745-1770, Massachusetts Historical Society, Jan 9, 1769, quoted in Dayton and Salinger, *Robert Love’s Warnings*, 140; Samuel A. Bates, ed., *Records of the Town of Braintree, 1640-1793* (Randolf, MA: Daniel H. Huxford, 1886), 41, mentioned in Eldridge, “Crazy-Brained,” 377.

criminal exemptions for cognitive incompetence. Typically, they would interrogate the potential ward or defendant along with family members, neighbors, and town officials, who would all weigh in on the individuals' capacities. Then, justices would make their own determinations as they saw fit. Illness and impairment were commonplace corporeal states in colonial America. As a result, bureaucrats and judges felt confident to detect and diagnose these conditions themselves.<sup>39</sup>

Although specialists on impairment were seldom used in legal and governmental capacities, everyday individuals did turn to those they believed to be authorities on the body when affliction arose. Most often, they turned to ministers. In the colonial period, sickness and incapacity, whether congenital or acquired, were understood as moral and religious concerns. Clergymen wrote and preached about the spiritual causes of ill health as well as the responsibilities of individuals during times of indisposition. Ailing people also conferred with ministers for guidance. Parkman, for example, spent much of his time visiting and praying with sick members of his congregation. Over the course of the colonial period, religious perspectives on affliction changed. In the seventeenth century, clergymen tended to regard such conditions as blameless invitations for spiritual reflection, while in the eighteenth century they were more likely to hold people responsible for causing their disorders through moral irregularity or excess passions. In both cases, however,

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<sup>39</sup> "Idiots, and Distracted Persons," *Acts and Laws, of His Majesties' Colony of Connecticut in New-England*, 54; "An Act in Addition to and Explanation of the Law, Entitituled, An Act in Addition to and for the Explaining of the Law referring to Idiots," *Acts and Laws, of His Majesties' Colony of Connecticut in New-England, Passed by the General Assembly May 1716-1749*, 468; Wickham, "Conceptions of Idiocy in Colonial Massachusetts," 940.

ministerial advice to sick followers was generally the same: consider God's almighty power and reasons for sending debility, atone for sins, and, ultimately, resign to His will. As Nathanael Hooker preached in Hartford in 1769, "tis our duty, in a time of sickness, to *reflect upon our past lives, and enquire wherefore GOD is contending with us*" and then submit to God through "humble and earnest prayer."<sup>40</sup>

Ministers served impaired congregants by providing spiritual counsel; however, many also treated their physical and cognitive symptoms with medical therapies. Clergymen studied and owned classical medical texts as well as treatises by contemporary English physicians. In addition, many collected and circulated cures from local women known to be healers. Thomas Symes of Boston, for example, recorded recipes from "Sister Blower," including one for "Worms in Children." In some cases, ministers took their medical pursuits beyond providing free healthcare to their congregants. Thomas Thacher, the first preacher at the Old South Church in Boston, drew on his knowledge of the works of English physicians Thomas Sydenham and

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<sup>40</sup> Nathanael Hooker, *The Invalid Instructed: Or, GOD's Design in Sending Sickness upon Men, and their Duty Under it* (Hartford: Green & Watson, 1769), 20, 23, italics are original. For more on religion and healing in early America and the western Christian tradition more generally, see: Patricia A. Watson, *The Angelical Conjunction: The Preacher-Physicians of Colonial New England* (Knoxville: The University of Tennessee Press, 1991); Martin E. Marty and Kenneth L. Vaux, eds., *Health/Medicine and the Faith Traditions* (Philadelphia: Fortress Press, 1982); Ronald L. Numbers and Darrel W. Amundsen, eds., *Caring and Curing: Health and Medicine in the Western Religious Traditions* (New York: Macmillan, 1986); W. J. Sheils, ed., *The Church and Healing* (Oxford, England: Basil Blackwell, 1982); David E. Stannard, *The Puritan Way of Death: A Study of Religion, Culture, and Social Change* (Oxford, England: Oxford University Press, 1977); Amanda Porterfield, *Healing in the History of Christianity* (Oxford and New York: Oxford University Press, 2005); Gary B. Ferngren, *Medicine and Health Care in Early Christianity* (Baltimore: Johns Hopkins University Press, 2009); Deborah Madden, *A Cheap, Safe, and Natural Medicine: Religion, Medicine, and Culture in John Wesley's Primitive Physic* (New York: Rodopi, 2007); Margaret A. Winzer, "Disability and Society Before the Eighteenth Century: Dread and Despair," in Davis, ed., *The Disability Studies Reader*, 75-109.

William Harvey to publish the first medical broadside in British America, which instructed “the Common people of New England” in “how to order themselves and theirs” during epidemics. Other ministers, such as John Rogers of Ipswich, MA, cultivated thriving medical practices alongside their services at the church. In the end, ministers viewed their work of spiritual and medical healing as serving the same objective: the improved wellbeing of their followers. Medical treatments might temporarily resolve affliction, they believed, but they were ultimately ineffective without spiritual catharsis. As William Perkins, a formulator of Puritan doctrine, wrote in 1596,

Oftentimes it comes to passe, that diseases curable in themselves are made incurable by the sinnes and the impenitencie of the partie; and therefore the best way is for them that would have ease, when God begins to correct them by sickness, then also to begin to humble themselves for all their sinnes, and turn unto God.<sup>41</sup>

Ministers also practiced medicine because physicians were scarce in the colonies. Patricia A. Watson has estimated that the average ratio of medical practitioners to the general population in seventeenth-century New England was about 1:1,000. Comparatively, in England at the time, the ratio was about 1:250 in the provinces and 1:400 in London. Towards the late

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<sup>41</sup> Thomas Symmes, Manuscript Notebook, 1696-1774, American Antiquarian Society, quoted in Watson, *The Angelical Conjunction*, 33-34; Thomas Thacher, *A Brief Rule*, in Harry R. Viets, ed. (Baltimore, MD: Johns Hopkins University Press, 1937), ii-liv, mentioned in Watson, *The Angelical Conjunction*, 42; Sibley, *Sibley's Harvard Graduates*, 1:166-70, mentioned in Watson, *The Angelical Conjunction*, 53; William Perkins, *A Salve for A Sicke Man* (London, 1596), 25, 32, quoted in Watson, *The Angelical Conjunction*, 11-12. For more on the medical practices of physicians in colonial America and early modern England, see footnote 40 and Robert S. Gottfried, “English Medical Practitioners, 1340-1530,” *Bulletin of the History of Medicine* 58 (1984), 164-182.

eighteenth century, the number of doctors in America gradually increased, reaching a high in 1780 at 1:417. Even at this point, however, most colonists would have had little contact with trained providers. As Samuel Lee, an English physician and preacher, proclaimed in 1686, medicine was “very raw” in America, with “no degrees of physick,” apothecaries practicing “what they will,” and surgeons having “no qualification but fro[m] their owne [surgical] chest & boxe.” One reason that physicians had a limited presence in the colonies was that most individuals were unable to pay for medical services, which discouraged the migration of English-trained practitioners. By 1700, English physicians, surgeons, and apothecaries all had organized and formed their own guilds, equipped with attendant titles and licenses. Physicians, in particular, occupied an elite status and charged high fees for their services, which ordinary colonists could not have matched. As a result, few English providers moved to America and colonial ministers rose to fill the void.<sup>42</sup>

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<sup>42</sup> Watson, *The Angelical Conjunction*, 2. Paul Starr estimates that “at the time of the Revolution, there appears to have been about 3,500 to 4,000 physicians [in the colonies]; 400 of them had formal medical training, perhaps half as many held medical degrees.” Paul Starr, *The Social Transformation of American Medicine: The Rise of a Sovereign Profession and the Making of a Vast Industry* (Basic Books, 1982), 40. “Letters of Samuel Lee and Samuel Sewall Relating to New England the Indians,” *Publications of the Colonial Society of Massachusetts* 14 (1912), 146-147, quoted in Watson, *The Angelical Conjunction*, 2. For more on physicians in colonial America, see footnote 6 and Helen Brock, “North America, a Western Outpost in European Medicine,” in Andrew Cunningham and Roger French, eds., *The Medical Enlightenment of the Eighteenth Century* (Cambridge and New York: Cambridge University Press, 1990), 194-216; Lamar Murphy, *Enter the Physician: The Transformation of Domestic Medicine, 1760-1860* (Tuscaloosa, AL: University of Alabama Press, 1991). For more on the medical profession and high cost of medical care in early modern England, see: Roy Porter, *Disease, Medicine, and Society in England, 1550-1860* (Cambridge and New York: Cambridge University Press, 1995); Doreen E. Nagy, *Popular Medicine in Seventeenth-Century England* (Bowling Green University Popular Press, 1988); Andrew Wear, *Knowledge and Practice in Early Modern England Medicine* (New York: Cambridge University Press, 2000); Mary Dobson, *Contours of Death and Disease in Early Modern England* (Cambridge: Cambridge University Press, 1997).

In addition, physicians were in short supply because colonists were used to caring for illness and impairment at home without medical guidance. Healthcare was part of the domestic economy in which women collected and shared remedies and tended to indisposed family members and friends. In the seventeenth century, most women obtained their healing knowledge through oral tradition, learning from older women known for their abilities in caring for the sick. Towards the eighteenth century, domestic manuals with therapies and advice on managing disease and debility circulated. Nicholas Culpeper's *The English Physician* and John Wesley's *Primitive Physic: Or, an Easy and Natural Method of Curing Most Diseases* were among the most popular. Both texts outlined treatments for hundreds of conditions, from "deafness" to "frenzy," "falling sickness," "melancholy," "blindness," and "deformity." This diffusion of medical knowledge rendered few colonists willing to seek and pay for the services of trained providers. Many, however, sought out consultations with ministers, whose assistance was often free and who could provide both spiritual and medical advice.<sup>43</sup>

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<sup>43</sup> Starr, *The Social Transformation of American Medicine*, 32-35; Nicholas Culpepper, *The English Physician* (London: Booksellers, 1785); John Wesley, *Primitive Physic; or, An Easy and Natural Method of Curing Most Diseases* (Trenton: Quequelle and Wilson, 1788). For more on domestic medicine and home care, see: Guenter Risse, Ronald L. Numbers, and Judith W. Leavitt, eds., *Medicine Without Doctors: Home Health Care in American History* (New York: Science History Publications, 1977); Roy Porter, ed., *The Popularization of Medicine, 1650-1850* (London and New York: Routledge, 1992); Charles Rosenberg, *Right Living: An Anglo-American Tradition of Self-Help Medicine and Hygiene* (Baltimore: The Johns Hopkins University Press, 2003); Madden, *A Cheap, Safe, and Natural Medicine*; Rebecca Tannenbaum, *The Healer's Calling: Women and Medicine in Early New England* (Ithaca, NY: Cornell University Press, 2002); Susan Brandt, "Gifted Women and Skilled Practitioners: Gender and Healing Authority in the Delaware Valley, 1740-1830" (Ph.D. Dissertation, Temple University, 2014); Ellen G. Gartell, "Women Healers and Domestic Remedies in 18<sup>th</sup> Century America: The Recipe Book of Elizabeth Coates Paschall," in Robert J. Goler and P. J. Imperato, eds., *Early American Medicine: A Symposium* (New York: Fraunces Tavern Museum, 1987), 15-21.

### *Towards the Early Republic*

After the Revolution, states and the federal government began to enforce disability-based benefits and exclusions more stringently and enact new measures delineating the legal and political capacities of impaired people. The market for impairment-related products and services also boomed, bringing categories of disability into the early national economy and aligning them with sources of profit. As a result, by the mid-nineteenth century, constructions of disability based on physical and intellectual incapacity were more established and entrenched in American politics, economy, and society.

Three primary changes underlay these developments. First, in the Early Republic, the United States government grew rapidly, bringing everyday individuals into closer contact with bureaucratic officials and processes and questions about citizenship and its limits to the fore. From the “great national discussion” of 1777 and 1778 to the writing and re-writing of state constitutions, many Americans joined in creating a stronger and more centralized nation-state equipped with the powers and privileges that allowed it to compete on an international scale. Central to these state-building initiatives were questions about the responsibilities of the government to the social welfare of citizens and, consequently, who was entitled to citizenship. Disability figured centrally in both debates, as it became the first and most common cause for state-sponsored social welfare subsidies and a rationale for denying impaired people basic rights. In this context, a strengthened and

expanded category of disability emerged with significant repercussions for disabled people.<sup>44</sup>

Second, the United States economy burgeoned in the Early Republic, which both fostered the creation of disability categories in the private sector and confounded established understandings of disability centered on the inability to labor. Post-Revolutionary advances in transportation, communication, and industrialization promoted commerce, stimulating the rise of new industries and economic centers and connecting small producers and consumers to national and world markets. Impairment-related products and services were part of these developments, as were impaired and disabled people. Their involvement and the new possibility of profit from disability sparked the emergence of such categories in the early national economy. At same time, industrialization complicated conceptions of disability, formed in the colonial period and renewed after the Revolution, that emphasized laboring incapacity. With work more often, but not exclusively, conducted for wages outside the home, how was disability to be measured and determined? The growth of the early national market economy thus simultaneously generated and confused disability categories, producing growing pains that were largely resolved by the mid-nineteenth century.

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<sup>44</sup> Isaac Kramnick, “The ‘Great National Discussion’: The Discourse of Politics in 1787,” *The William and Mary Quarterly* 45, 1 (Jan 1988), 3-32. For more on American state and nation building in terms of disability, see: Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010); Deborah Stone, *The Disabled State*; David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston and Toronto: Little, Brown and Company, 1971); Rosemarie Garland Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1997); Anne L. Schneider and Helen M. Ingram, *Deserving and Entitled: Social Constructions and Public Policy* (Albany: State University of New York Press, 2005), ch. 1 and 2.

Finally, the expansion of bureaucratic, legal, institutional, and cultural constructions of disability was made possible by advances in medical professionalization. During the Early Republic, physicians became more prevalent and powerful, as they followed English precedent and established medical societies and schools to organize and regularize their profession. Despite not being seen as experts on impairment and disability in the colonial period, their elevated status helped them assert greater authority following the Revolution. Medical involvement also lent authenticity to categories of disability themselves. With the voice and support of a medical man, Americans increasingly accepted the utility of disability constructs for national governance, institutional administration, and social organization. A by-product of medical involvement was that such categories became harder for disabled people to negotiate. Lacking familiarity with medical terminology and, more importantly, a medical degree, they were no longer considered to be experts on their own bodies and capabilities. Such transformations, however, took time. After the Revolution and before the mid-nineteenth century, numerous and heated debates raged about the definition and implementation of categories of disability and their implications for disabled people and the nation.<sup>45</sup>

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<sup>45</sup> For more on medical professionalization, see footnote 16.

## Part I

### Disability as a Bureaucratic and Legal Category

## Chapter 2: Invalid Pensions for Wounded Revolutionary War Veterans

In September 1792, Thaddeus Beebe, a former private in the First Regiment of Connecticut Continental Troops, presented his application for a federal invalid pension to the District Court of Connecticut then sitting at New Haven. Before traveling the nearly fifty miles from his home in New London to make his case, Beebe had collected extensive documentation about his wounded body. Over the previous two weeks, he had asked two physicians, three neighbors, and four fellow soldiers to testify on his behalf at the New London County Courthouse. Before two justices of peace, the deponents had described Beebe's military service, wartime injuries, current impairments, and the extent to which they "rendered him incapable afterwards of getting a livelihood," as required by law. Now, armed with their depositions and showing his hurt eye, which had been blinded after he was "Agreeably to an Order of Congress Inoculated for the Small Pox," Beebe attempted to convince district judges James Iredell and Richard Law of his disability and rationale for a pension.<sup>46</sup>

The New London residents that testified for Beebe described and demonstrated the impact of his disability in diverse ways. Joseph, Daniel, and Thomas Douglass, who were "near Neighbours" of Beebe, argued that he deserved a pension because his impairments limited his earning potential. "His means of support...has been by labouring on a small piece of land belonging to him and by days work for other people," they explained. But

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<sup>46</sup> Case File of Thaddeus Beebe and Claims of Invalid Pensions, April and September 1792, National Archives at Boston, RG21; Worthington C. Ford et al., ed., *Journals of the Continental Congress, 1774-1789* (Washington, D.C., 1904-37), August 26, 1776, 5:702-705.

“when he works at Day Labor it is at an under Rate.” Nathaniel Dickson, a tax collector in New London, instead stressed the longevity and probable permanence of Beebe’s incapacities. “He was a healthy well Man before he was Inoculated,” Dickson recalled. But “his health was so Impaired & his Constitution so broken down in my opinion by that that he has never recovered it since.” William Boit and Nathaniel Dickson, Beebe’s fellow soldiers in the service, took yet another tack and highlighted Beebe’s exemplary wartime performance and severe injuries. Beebe “behaved as a good Soldier,” Boit testified. Dickson, who had served as a nurse at the hospital where Beebe was interred, added that “he had that Disorder extreme[ly] bad...and was in danger of losing his life.”<sup>47</sup>

Judges Iredell and Law, along with Secretaries of War Henry Knox and Timothy Pickering who supervised invalid pensions over the course of Beebe’s application process, struggled to evaluate the varied perspectives these deponents offered on Beebe’s incapacities, reconcile them with new and frequently changing bureaucratic regulations, and provide Beebe with the appropriate compensation. When Iredell and Law assessed Beebe’s claim in 1792, regulations required that they measure his disability fractionally by comparing his “degree” to that of a veteran “wholly disabled.” After considering his documentation and verbally and visually examining his impairments, they concluded that he was one-quarter disabled and entitled to a monthly allotment of \$1.66. Two years later, however, Knox reversed this judgment and rejected Beebe’s claim due to bureaucratic stipulations beyond

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<sup>47</sup> Case File of Thaddeus Beebe, September 1792, National Archives at Boston.

his control.<sup>48</sup> When Beebe reapplied for a pension the following year, Pickering similarly denied his submission because the doctors who had testified on his behalf had not stated his “degree of disability” according to the most recent federal guidelines. Although Beebe received new medical examinations and submitted an application again one year later, he passed away in 1799 before ever receiving an invalid pension.<sup>49</sup>

Beebe was one of thousands of veterans who applied for an invalid pension in the decades after the American Revolution. This chapter studies their experiences, focusing on those like Beebe from Connecticut, and the construction, regulation, and negotiation of the category of disability in federal Revolutionary War invalid pensions—the first state-sponsored disability social welfare program in the United States. Just over one month after the ratification of the Declaration of Independence, the newly-formed Continental Congress—which, during the previous week, had revised the Articles of

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<sup>48</sup> Knox disallowed Beebe’s claim because of a Supreme Court decision on February 21, 1794 that invalidated claims filed under the invalid pension act of March 23, 1792, which had been repealed and replaced by the act of February 28, 1793. See footnote 52 and Henry Knox, “Decision of the Supreme Court...” February 21, 1794, *American State Papers: Claims*, 1:78; *Annals of Congress*, Third Congress, First Session, June 9, 1794, 765-766; Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston, RG21; Maeva Marcus, “Separation of Powers in the Early National Period,” *William & Mary Law Review* 30, 2 (Winter 1989), 269-278; Susan Low Bloch and Maeva Marcus, “John Marshall’s Selective Use of History in *Marbury v. Madison*,” *The Wisconsin Law Review* 1986, 2 (1986), 301-338; Wilfred J. Ritz, “United States v. Yale Todd (U.S. 1794),” *Washington and Lee Law Review* 15, 2 (Fall 1958), 220-233.

<sup>49</sup> Case File of Thaddeus Beebe, Claims of Invalid Pensions, and Revolutionary War Record Book of Proceedings on Pension Cases, 1792-1797, National Archives at Boston; United States Statutes at Large, “An Act to Provide for the Settlement of the Claims of Widows and Orphans...” March 23, 1792, Second Congress, First Session, Ch. 11; United States Statutes at Large, “By the United States Congress Assembled,” June 7, 1785; United States House Journal, Fourth Congress, First Session, March 9, 1796 and April 18, 1796; James McHenry to John Adams, January 17, 1797, Secretary of War Reports, National Archives and Records Administration, Washington, DC, RG46; “Died, In this town, Mr. Thaddeus Beebe,” *The Bee*, August 21, 1799.

Confederation and heard proposals for the Great Seal—passed an act entitling soldiers who were disabled in the line of duty to half pay for the duration of their disability. Following on pension schemes from England and the colonies, members of the Continental Congress defined disability as the inability to conduct economically productive labor and issued pensions to veterans based on their “degrees” of incapacity. This categorization of disability, however, provoked contentious debates among claimants, deponents, district judges, and federal bureaucrats about the meanings of labor and disability and the terms of proportional assessment. Politicians and legislators ultimately attempted to resolve these disputes, and reduce the number of veterans who appealed their judgments, by requiring that doctors wielding the emerging expert discourse of medicine adjudicate pension applications and allocations.

Historians have largely neglected the study of Revolutionary War invalid pensions because of the limited number of surviving sources.<sup>50</sup> Fires in the War Department in 1800 and 1814 destroyed most early pension claims and files.<sup>51</sup> This chapter draws on surviving materials, including a series of

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<sup>50</sup> There has been little scholarship on Revolutionary War invalid pensions, but a number of scholars have recently been changing this; see: Daniel Blackie, “Veterans, Disability, and Society in the Early United States,” in *Men After War*, eds., Stephen McVeigh and Nicola Cooper (London: Routledge, 2013), 36-51; Blackie, “Disabled Revolutionary War Veterans and the Construction of Disability in the Early United States, c. 1776-1840;” Mutschler, “The Province of Affliction: Illness in New England, 1690-1820.” Benjamin Irvin and Casey Green are also currently completing projects on Revolutionary War veterans and invalid pensions. Also see: William Henry Glasson, “History of Military Pension Legislation in the United States,” Submitted in Partial Fulfillment of the Requirements for the Degree of Doctor of Philosophy in the Faculty of Political Science, Columbia University, New York, 1900. For more on pensions in earlier periods, see footnote 20.

<sup>51</sup> Recent initiatives have worked to reconstruct material lost in the War Department fires by compiling copies of relevant documents in archives across the nation; see: “Papers of the War Department, 1784-1800,” a digital editorial project by the Roy Rosenzweig Center for

sixty-seven applications from Connecticut that escaped flames because they were returned to the District Court of Connecticut in 1794.<sup>52</sup> These sources are examined alongside Congressional petitions and proceedings; reports and records from physicians; correspondence between veterans, district courts, and the War Department; and genealogical information about veterans and their families. Ultimately, these materials reveal the extensive measures that bureaucrats took to regulate the category of disability in federal Revolutionary War invalid pension legislation and implementation. They also display the relentless efforts of veterans and those who testified on their behalf to negotiate these intensifying strictures and advance their own conceptions of disability.

### *Defining Disability in Pension Legislation*

The first act to establish Revolutionary War invalid pensions, passed on August 26, 1776, had two central components. It defined disability in terms of its impact on economically productive labor, stipulating that claimants would receive compensation if they were “so disabled in the service of the United States of America as to render [them] incapable afterwards of getting a livelihood.” In addition, the act issued pensions proportionally based on

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History and New Media at George Mason University, George Mason University, <http://wardepartmentpapers.org/about.php>.

<sup>52</sup> These sixty-seven applications from Connecticut survived because they were disallowed by the Supreme Court decision of February 21, 1794 (see footnote 48). Knox communicated the Supreme Court’s decision to Congress on June 9, 1794 and instructed that the rejected applications be transmitted back to the district courts so that claimants could use them in future applications. Judge Law recorded the receipt of eighty-four invalid pension claims on July 24, 1794. Sixty-seven veterans failed to retrieve their applications and these files remained at the District Court until they were relocated to the National Archives at Boston.

veterans' degrees of disability. Soldiers "who shall be wounded in any engagement so as to be rendered incapable of serving the army or navy, though not totally disabled from getting a livelihood," the act declared, "shall receive such monthly sum as shall be judged adequate by the assembly or other representative body of the state where he belongs." These dual provisions—disability in terms of labor and pensions according to degree—rooted the United States' first invalid pension program in a long history of governmental aid for injured veterans.<sup>53</sup>

It took more than a decade for the 1776 pension act to be fully realized and implemented. The Continental Congress—and succeeding Confederation Congress—had limited authority and could only recommend that states adopt the scheme they proposed. As a result, during the 1770s and 1780s, veterans received pensions sporadically according to varied state laws. Some states, such as Virginia and Pennsylvania, created well-established and regulated pension programs, while other states' systems were virtually non-existent. In 1789, Congress began to consolidate these state-managed schemes and streamline them according to their original stipulations, although some states continued to distribute pensions independently. By 1792, there were nearly 1,500 veterans on the federal rolls and thousands more invalid pension applications submitted to the War Department. Twenty-four years later, in 1816, at least one thousand more veterans were receiving federal support for disability, costing the government nearly \$120,000 annually. In 1818, the expense of invalid pensions was surpassed by service pensions—new

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<sup>53</sup> Ford et. al., eds. *Journals of the Continental Congress, 1774-1789*, August 26, 1776, 5:702-705.

legislation that provided relief to all Revolutionary War veterans who had served for more than six months. Nevertheless, federal legislation on invalid pensions continued to be renewed and amended into the 1830s and remained in effect until 1869 when the last Revolutionary War serviceman died.<sup>54</sup>

Although each act renewing invalid pensions specified its own procedures for application and evaluation, veterans were usually required to submit evidence of their disabilities to local, then state, and then federal authorities. For instance, when Beebe applied for a pension in 1792, he first compiled depositions from witnesses at his county courthouse and then submitted them as part of his claim to the district court. Regulations at the time mandated that Beebe appear in person before the court so that judges could visually and verbally assess his incapacities. After Beebe made his application and Judges Iredell and Law determined his eligibility and degree of disability, the court clerk, in this case Simeon Baldwin, transmitted their judgment, along with Beebe's supporting documentation, to the Secretary of War for oversight. During the Early Republic, jurisdiction over pensions vacillated between Congress and the Secretary of War, but in 1792, it was Secretary of War Henry Knox who assessed Beebe's claim and

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<sup>54</sup> Glasson, "History of Military Pension Legislation in the United States;" "An Act Providing for the Payment of Invalid Pensioners of the United States," March 4, 1789, *The Public Statutes at Large of the United States of America from the Organization of the Government in 1789 to March 3, 1845, Vol. I*, ed. Richard Peters (Boston: Charles C. Little and James Brown, 1845), 95; Henry Knox, "Invalid Pension Claims," December 14, 1792, *American State Papers, Claims*, 1:56-57; "Report of the Committee on Pensions and Revolutionary Claims, on the expediency of increasing the pensions of officers and soldiers disabled during the late war..." March 18, 1816, United States Fourteenth Congress, House Documents (Washington, 1816), 64; George W. Raff, *A Manual of Pensions, Bounty and Pay* (Cincinnati: Robert Clarke & Co., 1862). For service pensions, see: John Resch, *Suffering Soldiers: Revolutionary War Veterans, Moral Sentiment, and Political Culture in the Early Republic* (Amherst and Boston: University of Massachusetts Press, 1999).

communicated his verdict back to the district court. If Knox had approved Beebe's application, he would have begun receiving monthly allotments from the Connecticut State Treasurer. When Beebe received notice of Knox's rejection, however, his only option was to appeal to Congress.<sup>55</sup>

Revolutionary War veterans like Beebe recognized the terms by which the federal government defined disability and allocated pensions, and presented their cases accordingly. Many deponents stressed the hardships that claimants experienced in laboring for their own support. In Beebe's case, for example, the Douglasses declared that "after he was inoculated for the Small Pox he was unable to do but very little or no labour." Elisha Buckland, a "near neighbor" of veteran William Anderson of East Hartford, similarly contended that Anderson "has for the most part of the Time been incapable of pursuing his Trade [of Snuff-Making] and by Reason of Infirmitiy is wholly disenabled from prosecuting any Business in any other Line." In addition, deponents often adopted the federal government's proportional terms of assessment. Hezekiah Ackley testified that his neighbor, Lyman Kinne, "has been Carrying on in a small Degree the Farming Business and has been able to Labour moderately at sd Business about two thirds of sd time but not without some difficulty & Complaint." John Weff, a Captain in the Second Continental Light Dragoons, also noted that during "the last campaign [pension applicant Josiah Merriman] was not able to do duty more than one half of it owing to the wound he had received." Intent on demonstrating both

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<sup>55</sup> United States Statutes at Large, "An Act to Provide for the Settlement of the Claims of Widows and Orphans..." March 23, 1792; Case File of Thaddeus Beebe, Claims on Invalid Pensions, and Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston.

their disability and deservingness of relief, veterans and those who testified on their behalf molded the language of their applications to federal specifications.<sup>56</sup>

In some cases, deponents even used the exact words in pension legislation in their testimonies. The pension act passed in March 1792 under which the Connecticut veterans whose case files survive applied, for example, stipulated that “three reputable freeholders of the city, town, county, in which [the veteran] resides” should describe “the mode of life, employment, labor, and means of support of such applicant for the last twelve months.” Although many deponents presented this information in their own words, some followed the government’s directions exactly. John Powell of Washington, for example, testified “that the mode of Life, employment, or Means of Support for the last twelve months of sd [Moses] Smith is as follows (viz) that he has lived on Coarse fare, his employment has been day Labour, that he is a temperate man, that he has not by his own earnings more than half supported his family.” Roger Cogswell, a neighbor of applicant Cornelius Hamlin, also delivered such a regimented deposition. “His Mode of Life has been on Common Plain fare with frugality,” Cogswell declared, “his employment & Labour have been to Superintend & Oversee a Journeyman & Apprentice at the Carpenters business about one half of the time, and he has been able to Labour Moderately about one Quarter of the Time at the Carpenters

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<sup>56</sup> Judges rarely awarded veterans the fractional amounts that deponents suggested. They assessed Lyman Kinne as one quarter disabled, which entitled him to a monthly sum of \$1.66, and Josiah Merriman as two thirds disabled and eligible for \$6.66 per month. Claims of Invalid Pensions and Case Files of Thaddeus Beebe, William Anderson, Lyman Kinne, and Josiah Merriman, April and September 1792, National Archives at Boston.

business...the rest part of said Time he has been Unable to labour." Veterans and deponents not only adopted the federal government's definition and evaluation of disability, but they employed appropriate legislative terminology as well.<sup>57</sup>

### *Debating Disability in Pension Claims*

Despite the efforts of veterans and their advocates to align their testimonies with bureaucratic regulations, their descriptions of their impairments and daily experiences with work, family, community, and capital inevitably exposed ambiguities and complexities in the definition of disability in invalid pension legislation, revealing the challenges of constructing a category of disability and adapting earlier formulations to the early national period. As veterans, deponents, and district judges soon realized, the meanings of labor, livelihood, and incapacity upon which the federal conception of disability depended were sharply contested and the metric for proportionally evaluating disability left unexplained. Veterans and deponents tended to use the slippage between the language of legislation and the lived realities they and officials observed to understand disability broadly and holistically as a means to advocate for the merit of their cases. While district judges attempted to align their assessments of applicants with federal guidelines, confusions about what counted as labor, livelihood, incapacity, disability, and degree arose. Judges' uncertainties and recognition of these terms' complexities led to their

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<sup>57</sup> United States Statutes at Large, "An Act to Provide for the Settlement of the Claims of Widows and Orphans..." March 23, 1792; Case Files of Moses Smith and Cornelius Hamlin, April and September 1792, National Archives at Boston.

unsystematic and seemingly random rulings on veterans' claims and degrees of disability. Applicants who were dissatisfied with their allotments—or who simply recognized the potential that the ambiguities in invalid pension legislation presented—then moved on, appealing their cases to the Secretary of War and Congress.

Perhaps most commonly, deponents' descriptions of veterans' incapacities for work raised questions among district judges about the nature and amount of labor that qualified or disqualified for relief. Some deponents argued that veterans deserved pensions because their impairments limited the range of their labor. Asahel Disbrow, for instance, declared that claimant Amos Gray was "able to do the light work about the Farm" but should receive a pension because he was "unable to perform that hard Labor which otherwise he might have had he never received said wound." Other deponents asserted that veterans deserved support because their injuries reduced the quality of their work. Thomas Seymour advocated on behalf of Asa Bunce because he was "poorly able to perform Labor...Blasting in Wells," while John Stubbens simply noted that applicant Stephen Miner was "unable to do a day's work in a day." Still other deponents suggested that veterans should receive pensions because their labor was accompanied by pain. As Henrietta Maria Tyler, a boarder in the home of Josiah Witter, testified, "Witter is not disenabled from labour but is often exercised with pain, especially in the cold season of the year." In response to these varied representations of labor and disability, district judges were left to determine whether limited, inferior, or pained work counted as labor and thus disqualified these veterans from pensions or instead whether their challenging laboring conditions actually

entitled them to relief. Iredell and Law failed to respond consistently, assessing Bunce as one-half disabled and deserving of \$3.66, Witter as one-third disabled and entitled to \$10, and Gray and Miner as one-quarter disabled and eligible for \$1.66 and \$2.08 respectively.<sup>58</sup>

Additional negotiation about the meanings of labor and disability arose when deponents advocated for veterans who had acquired new trades after their wounds had prevented them from pursuing their previous ones. Many testifiers argued that claimants should be compensated for their troubles to learn a second profession. James Benedict, for example, noted that Isaac Richards had invested money “in a Small mercantile Line” after his “incurable lameness & decrepitude” required him to refrain from farming, while James Sawyer described the considerable time that Elihu Sabin, also previously a farmer, had spent learning to “make nails very well.” As veterans’ second careers were rarely as lucrative or esteemed as their first, deponents also suggested that veterans’ demotions in pay and status should be factored into their compensation. According to Reuben Mott, although Jedidiah Brown now earned his living by “taking fish out from the water,” he qualified for a pension because if he “was able to follow the [shoemaking] trade as before he received his wounds, the avails would furnish him with a competency that now...he is unable to supply.” Prichard Mansfield similarly described the loss of prestige that Silas Baldwin had experienced when his near blindness demanded that he relinquish his practice of “Bone Setting & Surgery” and

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<sup>58</sup> Case Files of Amos Gray, Asa Bunce, Stephen Miner, and Josiah Witter, April and September 1792; Claims of Invalid Pensions; and Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston.

apply “himself to manual labour for a subsistence.” District judges again responded to these complexities about labor and disability irregularly. While veterans’ efforts to pursue a second profession seemed to reveal their very capacity for work, these pursuits also demonstrated their previous incompetency and commendable attempts to preserve financial security. Iredell and Law’s assessments were erratic, with Richards and Baldwin receiving one-third disability and \$2.22, Sabin one-half and \$3.33, and Brown four-ninths and \$3.56.<sup>59</sup>

Deponents’ discussions of veterans’ industriousness also posed challenges for district judges. If they were hesitant to compensate candidates whose second careers revealed their capacity for labor, they were just as resistant to supporting veterans who made little effort to improve their situations on account of indolence. Deponents often stressed veterans’ desires to work and, when questions about their resolve arose, presiding justices of the peace investigated. Jared Beardflu, for example, testified that David Blackman was “very industrious with all, notwithstanding his difficulty and embarrassments,” while Enos Curtis held that Heber Smith was “industrious as far as his Infirmities of body would permit.” Questions, however, arose in the case of Moses Smith. After James Armstrong and William Hopson concluded their depositions on his behalf, Justice of the Peace David Judson asked that they reiterate Smith’s dedication to labor, querying “have you not always understood that Mr. Smith...would not Labour

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<sup>59</sup> Case Files of Isaac Richards, Elihu Sabin, Jedidiah Brown, and Silas Baldwin, April and September 1792; Claims of Invalid Pensions; and Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston.

as hard as he did if necessity did not drive him to it?" While Armstrong responded affirmatively, Hopson answered "to the first part of the Question yes but as to the latter part he is not certain." District judges considered veterans' displays of industry when they assessed their claims, but the emphasis that federal legislation placed on relieving nonworking veterans required that they weigh their concerns about deservingness with evidence of laboring inactivity. These often conflicting considerations produced unsystematic responses. Iredell and Law evaluated industrious Heber Smith as one-third disabled and deserving of \$2.66, but both hardworking Blackman and ostensibly less hardworking Moses Smith as one-quarter disabled and entitled to \$1.66.<sup>60</sup>

District judges contended with the subjective meaning of livelihood in pension legislation when veterans and those who testified for them described the varying profits of their labor. Impoverished applicants often argued that they deserved compensation because of the great challenges they faced in supporting themselves and their families. Stedman Newbury, for example, advocated for Stephen Miner because the "land on which he lives is chiefly very poor" and "partly indebted for" and "a wife, one child, and an aged mother depend on him for support." Theodore Gilbertson also held that Theodore Andrus required relief because he was "in a State of Absolute Poverty and now lives on the Charity of the Benevolent." Wealthy veterans, in comparison, declared that they too deserved considerable pensions to sustain

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<sup>60</sup> Case Files of David Blackman, Heber Smith, and Moses Smith, April and September 1792; Claims of Invalid Pensions; and Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston.

their accustomed standards of living. Thomas Hobby, who had received fifty dollars a month as a Major in the service and now served as a Selectman and Constable in Greenwich, for instance, appealed his pension allowance because he had “a large and expensive family to maintain.” Most commonly, district judges awarded poor veterans higher degrees of disability and wealthy veterans higher monthly rates (because they had usually received higher salaries in the service).<sup>61</sup> As such, Andrus collected full disability and \$6.66, while Hobby gained one-sixth and \$15. Nevertheless, there are many instances in which impoverished veterans, such as Miner who was granted one-quarter disability and \$2.08, received low pension rates. District judges struggled to account for the variable remuneration of labor and the murky meaning of livelihood in pension legislation, and again issued seemingly arbitrary allotments.<sup>62</sup>

Questions about the connotations of livelihood continued when claimants and deponents described their familial circumstances and obligations. Many veterans who relied heavily on help from family and community members argued that they deserved the greatest pensions in order to reestablish themselves as capable patriarchs. Benjamin Smith, for example, testified that David Pratt, a ferryman, needed support because he

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<sup>61</sup> Harold Selesky draws similar conclusions about Connecticut invalid pensions following the French and Indian War. He argues that invalid pension allotments followed social station, so that wealthier men usually received higher monthly rates. However, he also finds that men with estates were routinely denied pensions. Harold Selesky, *War and Society in Colonial Connecticut* (New Haven and London: Yale University Press, 1990), 191-192.

<sup>62</sup> Case Files of Stephen Miner, Theodore Andrus, and Thomas Hobby, April and September 1792; Claims of Invalid Pensions; and Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston; Henry Knox, “A Record of the Reports of the Secretary of War, Vol II,” National Archives and Records Administration, Washington, DC, 91-92.

had “been made unable to pursue his business by reason of said disorder and been obliged to lend his ferry to his wife and sundry Small Children.” Daniel Salmon similarly claimed that James Wayland qualified for compensation because he “has a Large family to support which has chiefly subsisted on what his Neighbours Give him or what his wife supplies with her Labour.” Other deponents, however, argued that applicants who lacked familial and community networks deserved the highest pensions as recompense for the anchoring social stability that their disability had disrupted. As James Johnson testified, David Pendleton required relief because he “has no Land, house or home of his own but lives about from place to place where he can git in [and] has no other means of support.” Deponents’ descriptions of veterans’ familial circumstances and responsibilities again compelled judges to consider the subjective meaning of livelihood and the significance of social relationships to the experience of incapacity. Undecided on their approach or inconsistent in its implementation, Iredell and Law provided Pratt and Pendleton with one-half disability and \$3.33 but Wayland with only one-quarter and \$1.66.<sup>63</sup>

The struggles of district judges to systematically evaluate disability and compensate invalid pension applicants sparked considerable resentment from veterans and hundreds appealed their cases to the Secretary of War and Congress. Beebe was one such petitioner. In July 1790, he appeared before Congress with his lawyer, Simeon Reynolds, to request the repeal of an unfavorable decision on a previous invalid pension claim from 1780. Beebe

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<sup>63</sup> Case Files of David Pratt, James Wayland, and David Pendleton, April and September 1792; Claims of Invalid Pensions; and Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston.

and Reynolds began by describing the manner in which Beebe had been wounded, noting that “he was inoculated with others for the small pox” and subsequently “lost an eye.” They then argued that his application had been wrongly stalled by a New London selectman who had decided that Beebe’s request for a military discharge on account of impairment precluded him from compensation. The selectman, it seems, had determined Beebe’s injuries not significant enough to entitle him to release or rather that his request for a discharge showed lack of patriotism and sacrifice and thus pension ineligibility. Beebe and Reynolds worked to counter these perceptions by highlighting his considerable debilities and presenting a certificate from Brigadier General Jedidiah Huntington, which explained that Beebe was discharged after being “unfit for duty for twelve months.” Ultimately, however, Knox recommended that Congress reject Beebe’s petition, proclaiming that “in my opinion the proofs produced are not of such a peculiar and decisive nature as to require the case of the petitioner to be an exception to the Resolve after a lapse of thirteen years.”<sup>64</sup> Beebe’s appeal was not granted.<sup>65</sup>

Other discontented veterans also petitioned the Secretary of War and Congress and more explicitly relied on ambiguities and complexities in the definition of disability in pension legislation to argue their cases. Albert Roux, a captain from South Carolina, for example, explained to Congress that district judges had inadequately evaluated his laboring capacity and thus his

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<sup>64</sup> Beebe was discharged from the service on April 21, 1778, thirteen years before he submitted his petition to Congress. United States Circuit Court for the District of Connecticut, Case File of Thaddeus Beebe, September 1792; Henry Knox, “A Record of the Reports of the Secretary of War, Vol. II,” 72-73.

<sup>65</sup> United States House Journal, First Congress, Second Session, July 12, 1790 and February 22, 1791; Henry Knox, “A Record of the Reports of the Secretary of War, Vol. II,” 72-73.

disability and pension allotment. As Roux contended, he had “in a great measure lost the use of his right arm, and continue[d] unable to use it in any business that requires exertion” but was nevertheless denied support by district judges. Roux requested Congress to extend him “such compensation as you in your wisdom and Equity may think adequate.” Thomas Simpson, a New Hampshire officer, asked Congress to reassess his degree of disability. According to Simpson, although he was “entirely incapacitated from obtaining a livelihood by labor,” district judges had granted him “one quarter instead of one half of his full pay to which...he is entitled.” Still other claimants petitioned Congress to reevaluate their ability to earn their livelihood. Two weeks after Beebe presented his petition, for instance, Robert Connelly explained to Congress that he deserved relief because he was “blind and poor without the means of Subsistence.” Connelly noted that this was his second petition to Congress, the previous one being denied by the Secretary of War “by some mistake or other.” Veterans, such as Beebe, Roux, Simpson, and Connelly, attempted to exploit the contested meanings embedded in the category of disability in invalid pension legislation and the resulting discrepancies in pension assessment to contest unfavorable judgments on their cases and obtain greater relief. Their petitions also alerted Knox and Congress to the challenges of employing disability as an administrative classification—issues that they then set out to remedy in the late 1780s and early 1790s.<sup>66</sup>

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<sup>66</sup> Petition of Albert Roux, January 26, 1791, and Petition of Robert Connelly, June 1797 and July 28, 1790, reprinted in Kenneth Bowling, William Charles diGiacomantonio, and Charlene Bangs Bickford, eds. *Petition Histories: Revolutionary War Claims: Documentary History of the First Federal Congress of the United States of America, March 4, 1789–March 3, 1791, Vol. VII* (Baltimore and London: The Johns Hopkins University Press, 1997), 364, 356–357; Henry Knox, “Increase of Pension,” April 23, 1790, *American State Papers: Claims*, 1:18.

### *Federal Regulation and Medicalization*

Congress first addressed the challenges of defining disability and establishing a federal policy on invalid pensions in 1788. In June, the Continental Congress commissioned three Representatives—John Brown, Nathan Dane, and Alexander Hamilton—to form a committee and “take into consideration the invalid establishment.” Their report issued shortly after condemned the highly unregulated and disorganized nature of the program. Although a 1785 resolution required states to transmit their invalid pension rolls to the Secretary of War for oversight, they explained, only six states had followed these instructions and only two had included the necessary details in their subsequent reports. This lack of documentation, communication, and supervision, the committee argued, not only precluded them from accurately assessing the pension program but was also detrimental to the confederal government more generally. Without increased standardization of the category of disability and the allocation of pensions, they claimed, the number of pensioners would increase and the federal government would become “unduly extended.” The committee estimated that more than \$90,000 had already been allotted to veterans and that more were being added to the pension rolls daily. “Particular care,” they warned, must be “taken to prevent persons being placed on the lists who are not intitled to the benefits of the

resolutions." With this report, federal efforts to regulate disability and pension provision began.<sup>67</sup>

The initiative to provide greater organization to the invalid pension program fell first to Secretary Knox. Before Knox ascended to his position in 1785, he had demonstrated particular support for both service and invalid pensions. While a Major General in 1782, for example, he wrote to then Secretary of War Benjamin Lincoln that "it appears to me to be highly reasonable that America who under Heaven is indebted to the Army for her existence should make it some compensation for the value of its service." "A full denial of this justice would be a crime of great enormity," he added, "it would be the execrable sign of ingratitude." That same year, Knox also expressed support for invalid pensions specifically. Writing to then Governor of Massachusetts John Hancock about an officer who had been "dangerously wounded in the battle of Germantown," he declared that "the States have too much dignity and too high a character to support to permit the men who have shed their blood in their cause...to solicit the icy hand of charity for food." When Knox assumed the appointment of Secretary of War, then, it seemed that he was well acquainted with the interests of wounded soldiers and supportive of the pension programs that should provide them relief.<sup>68</sup>

As Secretary of War, however, Knox faced the enormous challenges of invalid pension legislation and implementation: the complex and contested

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<sup>67</sup> Ford et al., eds., *Journals of the Continental Congress, 1774-1789*, June 6, 1788, 36: 204-206.

<sup>68</sup> Henry Knox to Benjamin Lincoln, August 19, 1782, and Henry Knox to John Hancock, October 20, 1782, "Henry Knox papers, including retained and received correspondence," The Gilder Lehrman Institute of American History.

meanings of labor and disability, the mounting petitions from discontented veterans, and Congressional pressure to standardize and shrink the pension establishment. In late 1789, he turned to his longtime friend and co-founding member of the Society of the Cincinnati, Doctor William Eustis, for advice. Two months prior, Eustis had requested Knox's assistance in securing the appointment of Commissary of Pensions in Massachusetts. Although Knox had replied that the position would be discontinued because Congress intended to restructure the pension program, this request began a lively and heated correspondence between the men about the future of invalid pensions. In sharp contrast to the congressional committee's concerns about narrowing eligibility, Eustis proposed that Knox broaden the category of disability, increase the number of pensioners, and expand federal control over the establishment. "The truth is," Eustis argued, "this state has judged her citizens so grudgingly & so exclusively that she has not her just number [on the rolls] & those who are pensioned do not receive enough." "To effect a thorough remedy for this evil," he held, Knox should implement "a new inspection & return of the whole...under the direction of the General Government." Eustis recommended that the requirements for a pension be reevaluated and veterans who had been denied relief be reexamined. These changes, he noted, were a matter of "justice" and financial security for the states, in his case, Massachusetts. "We must increase the number," Eustis declared, "or many persons disabled in the service will fall an expense to the

Commonwealth who ought to be supported from the revenue of the United States.”<sup>69</sup>

Faced with Eustis’ advice, Knox formulated his approach for restricting the category of disability and standardizing pension assessment—without increasing federal oversight. “I feel as much for the invalids as any man,” Knox professed, but stressed that liberalizing the terms of disability and implementing a new federal inspection would be “impracticable.” For one, such an approach would create chaos and confusion. “A greater number of invalids would be dissatisfied than satisfied,” Knox asserted, “complaints would be endless, and the states as such would be disgusted as well as the persons who have heretofore inspected the invalids.” In addition, a new inspection would “issue in an additional expense far beyond the ability of the public.” According to Knox, the federal government could barely pay all of its current pensioners let alone finance a reexamination and the additional recipients that it would surely produce.<sup>70</sup>

Instead, Knox explained to Eustis that greater supervision of the category of disability and the distribution of pensions should occur at the local level. When veterans applied to their states, he reasoned, “local information and local influence must have excelled in the greatest degree and therefore

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<sup>69</sup> Henry Jackson to Henry Knox, October 11, 1789; Henry Knox to William Eustis, December 13, 1789 and January 31, 1790; and William Eustis to Henry Knox, January 23, 1790 and March 6, 1790, Henry Knox Papers, Gilder Lehrman Institute. For more on William Eustis, see: Reverend G. W. Porter, D. D. “A Sketch of the Life and Character of the Late William Eustis, who died while Governor of Massachusetts,” Read December 14, 1887, in *Lexington Historical Society, Papers Relating to the History of the Town, Read by Some of the Members, Volume 1* (Lexington, MA: The Historical Society, 1889), 101-109.

<sup>70</sup> Henry Knox to William Eustis, January 31, 1790 and March 28, 1790, Henry Knox Papers, Gilder Lehrman Institute.

favorable to the claimants.” Veterans who were denied support could appeal to their states—“hence the double chance of the opinions of Justice, influence, and humanity”—or were undoubtedly unqualified. Knox’s commitment to local and state jurisdiction guided his development of strategies to standardize disability and pension assessment over the coming year. In particular, his desire to limit the power of federal bureaucrats led to his decision that physicians would be best local adjudicators of pension claims. In February 1791, with his advice for regulation finally established, Knox approached Congress for approval.<sup>71</sup>

Knox’s report to Congress began by acknowledging the “considerable number” of petitions presented by discontented invalid pension applicants at the present session and the challenges of accurately assessing their disabilities and degrees. Although “utter incapacity for labor or of obtaining a livelihood seems to be the criterion of highest disability,” he remarked, “the grades of disability are several until they are hardly perceptible.” Like veterans and deponents, then, Knox was acutely aware of the variability and subjectivity of the category of disability and the complexities of systematically issuing compensation. Knox continued his report by proposing three strategies for streamlining pension claims and assessments, clarifying the definition of disability, and preventing “unnecessary applications and waste of public time.” First, drawing on his correspondence with Eustis, Knox argued that Congress should grant states full authority over pension determinations and refrain from altering the decisions of district judges. “If any decision made

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<sup>71</sup> Ibid.

in the States should be reversed or modified by Congress,” he declared, “an inundation of applications would follow.” With this suggestion, Knox intended to prevent claimants from exploiting intricacies and ambiguities in the category of disability to negotiate between federal and state bodies for greater relief. His advice also ultimately left those who were dissatisfied with their allotments with few opportunities for recourse.<sup>72</sup>

Second, Knox recommended that Congress refine the classification of disability by distinguishing it from sickness. “Decisive disability,” he argued, was “the effect of wounds or some other known cause while the petitioners were employed in the line of duty.” Sickness, in comparison, included “cold, rheumatism, or other disorders” with indeterminate causes and variable effects, and did not qualify for compensation. Knox had developed his distinction between sickness and disability when adjudicating invalid pensioners’ petitions. For example, in 1790, he denied an appeal from Ruth Roberts on behalf of her husband, a former militia captain, not only because he disliked reversing district judges’ decisions, but also because he remained unconvinced that Captain Roberts’ *“disability was the immediate effect of some exertion or suffering in the line of duty.”* That same year, Knox also rejected a petition from Lieutenant Thomas McKinstry because his “disease in his eyes” on account of smallpox was “not of such a decisive nature as to entitle him to a pension.” In general, Knox’s distinction between sickness and disability was extremely murky and, in many cases, the terminology that veterans used in their applications mattered more than their actual

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<sup>72</sup> Henry Knox, “Invalid Pensions,” February 26, 1791, *American State Papers: Claims*, 1:28-29.

impairments or incapacities, resulting in the perplexing situation in which veterans in similar situations received very different pension allotments. Nevertheless, Knox proposed that Congress differentiate between sickness and disability because he hoped that it would provide greater clarity and control to the pension program. His idea also caused the removal of hundreds of veterans whose injuries had indeterminate causes, unexplained symptoms, variable expressions, or later developments from the rolls.<sup>73</sup>

Finally, Knox made the crucial and revealing suggestion that Congress standardize the category of disability and the distribution of pensions by appointing physicians, not district judges, to adjudicate pension claims. Currently, he argued, there was little consistency in veterans' degrees of disability and, as a whole, district judges were too lenient in their assessments. "It is to be remarked," Knox asserted, "that it is easy, from the influence of humanity, to obtain plausible certificates, even from men of good character." Knox argued that medical oversight would help to regulate the category of disability and invalid pension allocation without increasing federal involvement. He recommended that "all invalids shall be examined by three physicians, on oath, in the presence of the...judge of the district in which such invalids may reside." Knox clarified his proposal further in an undated and likely personal note on the subject, writing that "respectable physicians on oath...should certify the nature and degree of the disability whether temporary

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<sup>73</sup> Ibid; Henry Knox, "Invalid Pensions," January 25, 1790, *American State Papers, Claims*, 1:5-6, italics are original; Henry Knox, May 24, 1790, *A Record of the Reports of the Secretary of War, Vol. II*, National Archives and Records Administration, Washington, DC. For more on Knox's distinction between disability and sickness, see: Blackie, "Disabled Revolutionary War Veterans and the Construction of Disability in the Early United States," 84-86; and Mutschler, "The Province of Affliction: Illness in New England," 286-298.

or permanent and the degree thereof whether wholly, half, or quarter disabling the claimant from labor." All of Knox's suggestions to Congress in 1791 would have dramatic consequences for the emerging bureaucratic category of disability and the invalid pension program, but his third and final recommendation of using doctors to determine disability proved particularly influential. As Knox intended, physicians would become partners with the state in defining and enforcing the category of disability and assessing the bodies of wounded veterans.<sup>74</sup>

At first, Congress responded to Knox's advice ambivalently. In late 1791, the House of Representatives commissioned John Laurance, Thomas Fitzsimons, and Robert Barnwell to prepare a bill to revise the invalid pension program. Although their proposal drew heavily on Knox's advice, it would not survive congressional voting in its original form. The committee recommended that district judges appoint a "reputable Physician residing [in their region] for the examination of invalids." These doctors would examine veterans' certificates from commanding officers and freeholders, inspect their wounds, and assess their degrees of disability. They would then report their decisions to district judges and the Secretary of War, who would place eligible veterans on the rolls. The committee's bill passed easily in the House but was met with disagreement in the Senate, where statesmen insisted that district judges, not doctors, should evaluate veterans' claims. As such, the Senate replaced every mention of "physician" in the proposed bill with "circuit court."

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<sup>74</sup> Henry Knox, "Invalid Pensions," February 26, 1791, *American State Papers: Claims*, 1:28-29; Henry Knox, Notes Regarding Invalid Pensioners, Undated, Henry Knox Papers, Gilder Lehrman Institute.

This response occasioned a near impasse between the houses. The House replied by “disagree[ing] to the third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth amendments” the Senate proposed and only reconsidered after select members of the houses met in a confidential conference on the subject. Eventually, in March 1792, President George Washington signed the bill with the Senate’s revisions and without involvement from doctors in any aspect of the pension program. Knox would have to wait another year for his recommendations on disability and invalid pensions to be adopted in full.<sup>75</sup>

The following February, Congress repealed the 1792 act and replaced it with another to govern the pension program. The primary reason for this change was the uproar that the 1792 measure had caused among district judges, such as Iredell and Law, who argued that it unconstitutionally gave Congress and the Secretary of War authority over judicial decisions. The 1793 act had additional significant changes. Unlike its predecessor, it incorporated all of Knox’s suggestions for refining the category of disability and standardizing the pension system. The act specified that veterans who had been previously examined and rejected by their states were ineligible for pensions. It required claimants to prove “decisive disability” defined as “the direct effect of known wounds or hurts received while in the actual line of duty.” And the act ordered that “every claimant shall be examined by two physicians, under oath...who shall report in writing their opinion on the nature

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<sup>75</sup> United States House Journal, Second Congress, First Session, December 1, 1791, January 6, 1792, March 5, March 6, March 14, March 16, 1792; United States Senate Journal, Second Congress, First Session, February 21, February 28, March 5, March 6, March 14, March 19, March 23 1792; “An Act to Ascertain and Regulate the Claims to Half Pay and to Invalid Pensions,” January 26, 1792, *United States Laws, Statutes, etc.* (Philadelphia: Fenno, 1792); United States Statutes at Large, “An Act to Provide for the Settlement of the Claims of Widows and Orphans...” March 23, 1792.

of the said disability, and in what a degree it prevents the claimant from obtaining a livelihood by labor." As Laurance, Fitzsimons, and Barnwell had proposed, these "examining physicians or surgeons" would oversee and adjudicate all invalid pension claims in their county before their decisions were transferred to district judges and the Secretary of War for approval.<sup>76</sup> Knox's advice for regulating and medicalizing the category of disability and the invalid pension program were finally made into law.<sup>77</sup>

Many doctors embraced their new roles as invalid pension examiners and followed federal regulations closely. Doctor James E. Beech's report on David Morehouse, a private from Fairfield, CT, is exemplary. Beech began by describing Morehouse's impairments in detail, writing that "for the six years

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<sup>76</sup> Henry Knox, "Decision of the Supreme Court..." February 21, 1794, *American State Papers: Claims*, 1:78; *Annals of Congress*, Third Congress, First Session, June 9, 1794, 765-766; Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston. For more on the Supreme Court decision and repeal of the 1792 act, see footnotes 48 and 52. United States Statutes at Large, "An Act to Regulate the Claims of Invalid Pensions," February 28, 1793, Second Congress, Second Session, Ch. 17. Mutschler and Blackie also note that the 1793 act implemented the distinction between disability and sickness in federal invalid pension legislation: Mutschler, "The Province of Affliction: Illness in New England," 286-298; Blackie, "Disabled Revolutionary War Veterans and the Construction of Disability in the Early United States," 84-90.

<sup>77</sup> It is important to note that this was not the first time that doctors had been involved in the administration of invalid pensions in the United States. The initial act to establish invalid pensions in 1776 had instructed claimants to submit documentation of their disabilities from both the physician who attended them in the war and an officer in the engagement in which they were wounded in cases in which their commanding officer, whose certification of disability was preferred, had died. Thus, while the commanding officer's certificate of disability was standard and desirable, notes from an attending doctor and another officer also sufficed. When states enacted their own invalid pension programs in response to the 1776 act, they implemented similar provisions. Nevertheless, prior to 1793, there were many veterans who applied for invalid pensions without receiving or submitting medical examinations, as Beebe did in 1780. The 1793 act expanded and elevated the role of physicians by mandating that all invalid pension claimants be evaluated by two doctors and by authorizing appointed "examining physicians or surgeons" to supervise pension applications and allocations in their county. Ford et al., eds., *Journals of the Continental Congress, 1774-1789*, 5:702-705; Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston; United States Statutes at Large, "An Act to Regulate the Claims of Invalid Pensions," February 28, 1793, Second Congress, Second Session, Ch. 17.

last past [I have] been knowing to his being frequently troubled with the Rheumatism to a great degree in his hip thigh & leg of the Right Side & the Shoulder of the left, so that his Right thigh & leg is much immaciated & walks with great difficulty." Beech then focused on Morehouse's degree of disability. "He has appeared to be in a debilitated state to a great degree," Beech held, "so that he is entirely unable to procure a subsistence for himself & family." Some doctors went further and provided additional information they thought relevant to veterans' candidacies. Doctor Gabriel Baldwin, for instance, stressed the permanence of Burr Gilbert's condition due to the limitations of medical treatment. "[I do not] believe that said Gilbert will ever recover his health again, as his constitution of body is so broke that it seems to be out of the reach of medicine to effect or cure," he declared. Doctors Thomas J. Cornwell and David Beebe, in comparison, noted the "most Exquist Pain" that Toney Turney experienced when laboring. "A rupture of the inferior part of his Abdomen upon any considerable exercise gives him the most excruciating pain," Cornwell contended, "& of consequence disenables him from getting the necessities of Life by his Labour." Intent on demonstrating their professional status and potentially attracting new clients, physicians were willing partners with the state in assessing pension claims and they attempted to describe veterans' disabilities and degrees according to federal stipulations.<sup>78</sup>

Nevertheless, the partnership between doctors and the federal government was soon fraught with misunderstandings, miscommunications,

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<sup>78</sup> Case Files of David Morehouse, Burr Gilbert, and Toney Turney, April and September 1792, National Archives at Boston.

and mismatched priorities. Although physicians welcomed the opportunity to collaborate with federal officials and bureaucrats desired medical involvement to standardize disability and pension provision, many doctors still struggled to follow federal regulations and assess disability proportionally, posing challenges for officials. Beebe's experiences again reflect a common pattern. In July 1794, Beebe received notice that his pension claim from 1792 had been disallowed by a recent Supreme Court decision that nullified applications approved under the faulty premises of the 1792 act.<sup>79</sup> In May 1795, Beebe resubmitted his claim to the District Court of Connecticut and, in turn, to Timothy Pickering, the Secretary of War who succeeded Knox. In May 1796, however, Beebe received word that this most recent application had been rejected because his physicians' certificates were defective.<sup>80</sup> Although Doctors Thomas Coit and Samuel Wolcott, the appointed examining physicians for New London county, had carefully described Beebe's body and capabilities, their report had "neglected to specify the ratio of disability" as required by law. Once again, Beebe was evaluated by Coit and Wolcott, who determined him now to be two-thirds disabled, and submitted his claim to the

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<sup>79</sup> See footnotes 48 and 52.

<sup>80</sup> Although this letter from Pickering to Judge Law does not survive, Pickering penned a similar letter to John Lowell, the District Judge of Massachusetts, following the Congressional resolve of April 18, 1796, which directed the Secretary of War to return physicians' defective reports to district judges and require these veterans' reexamination. "By Authority, From the Secretary of State," Fourth Congress, First Session, Chapter 53, April 18, 1796, *The Public Statutes at Large of the United States of America from the Organization of the Government in 1789 to March 3, 1845, Vol I*, 495; United States House Journal, Fourth Congress, First Session, March 9, 1796 and April 18, 1796; James McHenry to John Lowell, May 26, 1796, John Lowell Papers, Harvard University.

District Court. When Beebe passed away in 1799 at the age of sixty-one, however, he was still waiting for his pension.<sup>81</sup>

Coit and Wolcott's failure to state Beebe's degree of disability was not an uncommon error. Doctor David Rogers also neglected to specify Samuel Bennett's degree of disability, necessitating his reexamination. In addition, Doctor Cogswell forgot to note Josiah Merriman's degree but caught himself and remedied his mistake before Merriman's application had been forwarded to the War Department. In Cogswell's first report, he wrote that Merriman "is entitled to some compensation from the public;" in his second report, he was more specific, noting that Merriman deserved two-thirds disability because his wounds "prevent him from following his occupation which he represents is that of a Cooper." Physicians also overlooked governmental regulations in their reports. Just one year before Coit and Wolcott examined Beebe, they forgot to write their certificates for veterans under oath as required by law. Their mistake stalled the claims of numerous applicants, including Jonathan Whaley and Samuel Edgecombe, Jr., until the physicians forwarded the required documentation to the War Department six months later. Despite their interest in collaborating with the federal government on invalid pensions, then, some doctors failed to conform to bureaucratic regulations and fractional

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<sup>81</sup> On January 17, 1797, Secretary of War James McHenry recorded Beebe on a list of invalid pension applicants who had been reexamined by physicians and forwarded the list to Vice President John Adams. According to the Congressional resolve of April 18, 1796, McHenry and Adams should have presented Beebe's case to Congress so that he could be placed on the pension list. This, however, is where Beebe's paper trail stops. He never received a pension. United States House Journal, Fourth Congress, First Session March 9, 1796 and April 18, 1796; Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston; James McHenry to John Adams, January 17, 1797, Secretary of War Reports, National Archives and Records Administration, Washington, DC; "Died, In this town, Mr. Thaddeus Beebe," *The Bee*, August 21, 1799.

conceptions of disability, instead favoring established methods of practice and more comprehensive understandings of the body.<sup>82</sup>

Yet, when Congress turned its attention to invalid pensions again in 1797, it decided to make no changes to the categorization of disability or the distribution of compensation. That year, the House of Representatives commissioned seven members, led by Dwight Foster, to investigate the invalid pension program and submit a communication detailing any necessary amendments. The committee's report began by detailing the history of pension legislation and implementation—the first act to establish invalid pensions in 1776, the many applications and appeals from veterans, the controversial 1792 act, and the reigning 1793 act under which “a large number of individuals have been placed on the list, and are now in the receipt of pensions, according to the several rates ascertained by the examining physicians, appointed by the district judges, pursuant to said law.” The committee recommended that Congress keep the invalid pension system as is. “The provisions heretofore made,” they declared, “have been as extensive as the principles of justice, equity, or good policy required.” The 1793 invalid pension act remained in effect until 1806, when it was slightly altered to include veterans who had served as volunteers, militia, or state troops and whose wartime injuries had produced incapacities later in their lives. The 1806 act was then repeatedly renewed until 1862, when the vast majority of Revolutionary War veterans were dead. Notwithstanding later developments,

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<sup>82</sup> Case Files of Samuel Bennett and Josiah Merriman, April and September 1792, and Revolutionary War Record Book of Proceedings for Pensions, 1792-1797, National Archives at Boston; James McHenry to John Adams, February 20, 1797, Secretary of War Reports, National Archives and Records Administration, Washington, DC, RG46.

Knox's recommendations for standardizing disability and pension provision remained in effect. The regulation and medicalization of the category of disability in federal invalid pensions had come to stay.<sup>83</sup>

As the first federal disability social welfare program in the United States, the late eighteenth-century record of Revolutionary War invalid pensions reveals much about the process of constructing, implementing, negotiating, and refining a bureaucratic category of disability in the Early Republic. Grounding their pension system in previously-established schemes in England and the colonies, members of the Continental Congress initially defined disability as the inability to conduct economically productive labor and issued pensions according to degree of incapacity—specifications that, as veterans, deponents, district judges, and federal officials soon realized, were rife with ambiguities and alternate interpretations. Faced with hundreds of petitions from veterans who hoped to negotiate their cases and use the complexities in the category of disability to their advantage, politicians, most significantly Henry Knox, began a course of restriction and regulation, shaping the meanings and consequences of disability to the federal government's benefit. Physicians and the emerging expert discourse of medicine provided the necessary backing and authority for these changes, even though the relationship between bureaucrats and consulting doctors remained fraught. By

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<sup>83</sup> United States House Journal, Fifth Congress, Second Session, December 20, 1797; "Invalid Pensions," March 26, 1798, *American State Papers: Claims*, 1:216; United States Statutes at Large, "An Act to Provide for Persons who were Disabled by Known Wounds Received in the Revolutionary War," April 10, 1806, Ninth Congress, First Session, Chapter 25; Raff, *A Manual of Pensions, Bounty and Pay*.

1793, the category of disability in federal Revolutionary War invalid pensions was more clearly defined, closely managed, and medically determined than in previous years.

## Chapter 3, Educational Pensions for Blind and Deaf Young Adults

On July 2, 1819, Benjamin Tripp and Jacob Tripp, Junior became the first applicants to the state of Massachusetts for financial assistance in enrolling at the recently-established American Asylum for the Education and Instruction of the Deaf and Dumb in Hartford. As the brothers and their parents were illiterate, an extended family member or friend—such as Jeremiah Goodwin, the postmaster in their hometown of Alfred—had likely encouraged them to apply. The brothers wasted no time in compiling their submission. Just ten days after the Massachusetts General Court passed a resolve to “defray the expense of board and instruction of...deaf and dumb persons at the Asylum,” and three days after the local *American Advocate* reported the news, the brothers obtained letters of support from their father, Jacob Tripp, and the Alfred selectmen and posted them to Secretary of the Commonwealth Alden Bradford in Boston. Jacob’s letter explained how his sons were “unfortunate in being deaf & dumb as well as in the poverty of a father who is unable to instruct them or to afford them any pecuniary assistance.” The selectmen further confirmed that “said Tripp [was] extremely poor & unable to defray the expense of the board and instruction of his said children at Hartford.” Both letters concluded by stressing that the brothers were “a proper object” for “the bounty of the government.” Benjamin and Jacob Junior hoped that they would sufficiently convince Bradford and other members of the legislature of their deservingness of educational support.<sup>84</sup>

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<sup>84</sup> Documents in support of Benjamin Tripp and Jacob Tripp, Junior, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887, Massachusetts State Archives.

In early September, however, Goodwin received a letter from Bradford declaring that the Tripps' application required additional documentation. As Thomas Hopkins Gallaudet, founder and principal of the American Asylum, had outlined in recent correspondence, it was necessary for each state beneficiary to be "possessed of a good, natural intellect; free from any immorality of conduct; and from any contagious disease; and capable of forming and joining letters with a pen legibly and correctly." Bradford asked the Tripps to submit "a satisfactory certificate of such qualifications." Over the next month, the brothers collected new statements of support for their application. On September 25, the Alfred selectmen affirmed that the "lads both [were] of good natural capacity and capable of receiving instruction" and that they were "free from all contagious disease and not...chargeable with any vicious or immoral conduct." This report, however, seems not to have met the brothers' expectations as just two weeks later the selectmen completed another certificate declaring that "Jacob, the oldest boy, now writes a fair, legible, joining hand, and Benjamin, the youngest, forms and joins letters, with a pen, quite well." The brothers also obtained letters from Goodwin, who noted that Jacob was "a sprightly, intelligent, pleasant lad," and from Benjamin's penmanship instructor, who asserted that "his improvements in writing have been very rapid." Two weeks after the Tripps posted these additional certificates, they received notice from Bradford that they had been

selected as beneficiaries. In early December, as Goodwin later recalled, "by the charity of individuals, the boys were cloathed and transported thither."<sup>85</sup>

The Tripps were just two of hundreds of young adults who applied to their states of residence for scholarships to attend one of the many schools and asylums newly established for hearing and visually impaired individuals in the early nineteenth century. Massachusetts was the first state to extend financial support to approved beneficiaries in 1819, but within ten years, a number of other states, including Maine, New Hampshire, Vermont, and New York, had followed suit. Like Revolutionary War invalid pension claimants and deponents, deaf and blind young adults and their parents, guardians, and benefactors submitted testimonials to politicians demonstrating the disabling effects of their impairments and their worthiness of educational aid. Legislators and school directors then attempted to select the most deserving candidates, filtering submissions based on evolving conceptions of disability and capacity and intensifying administrative criteria.<sup>86</sup>

Focusing on applications from young adults in Massachusetts, like the Tripps, to attend the American Asylum (now the American School for the Deaf) and the New England Institution for the Education of the Blind (now Perkins), this chapter reveals how bureaucratic decisions about the selection

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<sup>85</sup> Ibid; Gallaudet and Ferry to Bradford, August 16, 1819, Massachusetts Office of the Secretary of State, Transcripts of Administrative Records of Schools for the Deaf, 1819-1874, Massachusetts State Archives.

<sup>86</sup> In 1828, the annual report of the American Asylum noted that Massachusetts, New Hampshire, Maine, and Vermont together supported 99 pupils at the asylum. New York also funded students at the New-York Institution for the Instruction of the Deaf and Dumb. "American Asylum at Hartford for the Education of the Deaf and Dumb," *American Journal of Education* 3, 8 (Aug 1828), 493; *Ninth Annual Report of the Directors of the New-York Institution for the Instruction of the Deaf and Dumb* (New-York: E. Conrad, 1828).

of beneficiaries, along with candidates' negotiation of these constraints, constructed disability as another distinct category of social welfare. Although legislation specified that applicants would be treated equitably—that they would be chosen "by lot" and allocated funds "in equal proportions," for example—such provisions obscured the real selective power of politicians and school managers in dispensing these grants. Like the government officers who oversaw invalid pensions, the statesmen and school managers who distributed scholarships tended to reward candidates who demonstrated that their impairments hindered their economic productivity, producing poverty. In the case of educational pensions, however, bureaucrats and school administrators also assessed applicants according to their potential for rehabilitation—the chance that they might effectively remedy their disability and indigence by becoming laboring, economically self-sufficient citizens following graduation. The requirement, adopted in 1829, that candidates for state support at the New England Institution submit medical evaluations was just one of many new policies intended to identify and distinguish these deserving students.

Some scholars have noted the provisions established by states for the education of impoverished hearing and visually impaired young adults, but these events and relevant sources have not been explored in detail.<sup>87</sup> This chapter draws on approximately 150 applications made to the Massachusetts

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<sup>87</sup> Scholarship on deaf and blind education and on the American School for the Deaf and Perkins in particular rarely mention state beneficiary programs; when they do, it is only in passing; see: R. A. R. Edwards, *Words Made Flesh: Nineteenth-Century Deaf Education and the Growth of Deaf Culture* (New York and London: New York University Press, 2012); Harlan Lane, *When the Mind Hears: A History of the Deaf* (New York: Random House, Inc., 1984); Kimberly French, *Perkins School for the Blind* (Charleston, Chicago, Portsmouth, San Francisco: Arcadia Publishing, 2004).

state legislature by young adults and their parents, guardians, town selectmen, ministers, and physicians seeking financial support for asylum enrollment. These materials are studied alongside legislative acts and proceedings, bureaucratic notes and evaluations, correspondence between state officials and school directors, and annual reports from the schools and asylums in question. Ultimately, these sources reveal how politicians—in partnership with school directors and, eventually, doctors—created and regulated a category of disability, rooted in economic unproductivity and potential, in beneficiary legislation and administration. They further show how deaf and blind young adults, with support from their parents and guardians, articulated alternate conceptions of their capacities in support of their candidacies in response.

### *Initial Legislation and Applications to the American Asylum*

In June 1819, the Massachusetts legislature passed a resolve to financially support poor “deaf and dumb” children at the then-named Connecticut Asylum, which had been founded two years prior in Hartford. Although Massachusetts was the first state to adopt such a provision, the measure was not unprecedented. For the previous two years, politicians had extensively discussed, investigated, and evaluated the “situation and circumstances” of deaf residents. In 1817, they asked town selectmen across the state to “ascertain the number of deaf and dumb persons within their respective towns and plantations, and report the same to the Secretary of this Commonwealth.” This census required town officials to declare the names,

ages, sexes, and “situation...in point of property” of all hearing impaired people in their region. When these reports had been received, tallied, and analyzed, President of the Massachusetts Senate John Phillips, Speaker of the Massachusetts House Timothy Bigelow, and Massachusetts House Representative of the Norfolk District Richard Sullivan then formed a committee to consider “the subject of the deaf and dumb persons” and “see what this commonwealth can consistently do to promote an institution to improve their condition and the most eligible mode of carrying the same into effect.” After months of communication “with intelligent men in this Commonwealth,” Phillips, Bigelow, and Sullivan proposed to the legislature that the state fund impoverished students at the Connecticut Asylum rather than establishing a similar institution in Massachusetts. Weeks later, the measure was adopted into law.<sup>88</sup>

Statesmen’s sudden and sustained interest in deaf residents was sparked by a number of factors. Reports and correspondence indicate that many were motivated by sentiments of charity, beliefs about the social responsibilities of government, and news about advances in deaf education in Europe. Legislative proceedings regularly reveal politicians’ commitment to

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<sup>88</sup> “Resolve respecting Deaf and Dumb,” June 19, 1819, *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced on the Twenty-Sixth of May, and Ended the Nineteenth of June, One Thousand Eight Hundred and Nineteenth* (Boston: Russell & Gardner, 1819), Ch. XLIV, 63-64; “Resolve to ascertain the number of deaf and dumb persons, throughout the state,” June 12, 1817, *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced on Wednesday, the 28<sup>th</sup> Day of May, and Ended on the 18<sup>th</sup> of June, 1817* (Boston: Russell, Cutler & Co., 1817), Ch. XXIV, 418; “Tuesday, Feb. 3, SENATE,” *Boston Commercial Gazette*, February 5, 1818; “Legislature of Massachusetts,” *Boston Weekly Messenger*, February 12, 1818; “Resolve respecting Deaf and Dumb, February 5, 1818,” *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced May 31, 1815, and Ending February 20, 1819* (Boston: Russell & Gardiner, 1819), Ch. CIII, 496-497.

social welfare. In one report, for example, Phillips, Bigelow, and Sullivan remarked that “as the present age is distinguished for worlds of benevolence and philanthropy, the situation of the unhappy persons to which the attention of the Legislature has now been called is far from being unworthy of the notice and paternal regard of the government.” Letters between statesmen and school managers also often noted bureaucrats’ “liberal and benevolent views,” “humane and generous provisions,” and “great pleasure in directing the intention of the legislature to this interesting class of our Fellow Beings.” Hearing impaired residents became the focus of politicians’ charitable efforts in part because of recent publicity about deaf education in Europe. In 1760, Abbé Charles-Michel de l’Épée began recording French signs and instructing the deaf community in Paris. His educational methods, along with the accomplishments of his successor Abbé Roch-Ambroise Sicard, received notice in American newspapers and praise from readers, especially in the North.<sup>89</sup> With information about deaf education and its successes circulating, then, Massachusetts legislators must have believed that their philanthropic intentions would be well served by extending schooling to deaf inhabitants.<sup>90</sup>

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<sup>89</sup> A related method of teaching deaf people through oral communication, such as lip reading and speech, was also discussed in the early nineteenth-century American media and more highly regarded in the South; see: Barry A. Crouch and Brian H. Greenwald, “Hearing with the Eye: The Rise of Deaf Education in the United States,” in John Vickrey Van Cleve, ed., *The Deaf History Reader* (Washington, DC: Gallaudet University Press, 2007).

<sup>90</sup> “Resolve respecting Deaf and Dumb,” February 5, 1818, *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced May 31, 1815, and Ending February 20, 1819*, Ch. CIII, 496-497; Brooks to Gallaudet, August 2, 1819 and Lincoln to Bangs, October 6, 1830, Massachusetts Office of the Secretary of State, “Transcripts of Administrative Records of Schools for the Deaf, 1819-1874.” For more on the history of deaf education, see: Lane, *When the Mind Hears: A History of the Deaf*.

In addition, Massachusetts politicians may have taken an interest in deaf education due to existing partnerships between asylums and state and federal bodies. In “Hearing with the Eye: The Rise of Deaf Education in the United States,” Barry A. Crouch and Brian H. Greenwald argue that schools for the deaf located in the North experienced different fates than those in the South because of the willingness of their founders to seek governmental support. Mason Fitch Cogswell, Gallaudet, and Laurent Clerc, the founders of the American Asylum, for example, readily sought state and federal aid. In 1816, they convinced the Connecticut legislature to incorporate the school and advance it \$5,000. Additionally, in March 1819, they obtained a grant from Congress for 23,000 acres of land in Alabama, which provided the revenue to construct school buildings and start an endowment. Founders of the Cobbs School in Virginia in 1815, which taught students using oral methods, in comparison, failed to seek governmental assistance due to their conviction that “such undertakings should be private endeavors without state interference or support.” This philosophy, Crouch and Greenwald explain, contributed to the school’s demise just two years later. In Massachusetts, then, legislators were likely familiar with and supportive of partnerships between school directors and state officials. Funding the enrollment of deaf residents at the American Asylum was simply a logical extension of this philosophy.<sup>91</sup>

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<sup>91</sup> Crouch and Greenwald, “Hearing with the Eye: The Rise of Deaf Education in the United States,” in Cleve, ed. *The Deaf History Reader*, 24-46; Edward M. Gallaudet, “History of the Education of the Deaf in the United States,” in Edward Allen Fay, ed., *American Annals of the Deaf and Dumb* (Washington, DC: Gibson Brothers, 1886), 132; “An Act in behalf of the Connecticut Asylum for teaching the Deaf and Dumb,” March 3, 1819, Fifteenth Congress, Session II, Chapter LVII, in Richard Peters, Esq., ed., *The Private Statutes At Large of the United States of America* (Boston: Charles C. Little and James Brown, 1846), 229.

Finally, Massachusetts statesmen may have been motivated to support deaf students as a means to reduce the expenses of state poor relief. In 1775, the Revolutionary Massachusetts General Court assumed responsibility for colonial accounts, including the maintenance of poor people who were without legal residency in a town and thus chargeable to the colony. Some recipients of this colonial, then state, aid had impairments, including deafness, which contributed to their inability to earn a livelihood. For example, in 1818, the Blandford selectmen submitted receipts totaling \$136 to the General Court for their “board and clothing [of] sundry paupers,” which included two “deaf and dumb” women who were “very poor” and “not inhabitants settled therein.” Although many hearing impaired people were financially self-sufficient or dependent on their families and communities, rather than the state, legislators seemed to believe that the provision of schooling to poor deaf young adults might both equip existing relief recipients with the skills to labor and earn a living and prevent potential beneficiaries from requiring aid in the future. Legislative and administrative records reveal such sentiments. Politicians corresponded with school directors about beneficiaries’ “future usefulness in life,” acquisition of “mechanical employments,” and prospects of “becoming, after they leave the Asylum, useful members of the community, and of supporting themselves.” In an address to the Massachusetts legislature after the passage of the 1819 resolve, Governor John Brooks was as explicit. The provision for deaf young adults, he held, was designed to “render...those who

are educated at the public expense, in as high a degree as practicable, useful to themselves and others.”<sup>92</sup>

According to the 1819 Massachusetts “Resolve respecting Deaf and Dumb,” four thousand dollars was to be annually appropriated from the state treasury for “the expenses of board and instruction of...deaf and dumb persons at the [Connecticut] asylum.” The resolution directed the parents, guardians, and town selectmen of hearing impaired young adults to submit applications to the Secretary of the Commonwealth demonstrating their child’s deafness and the family’s poverty and inability to provide educational aid. When submissions had been received, the Secretary was then to tally the number of candidates and select them “by lot,” or at random, for asylum enrollment. The designated four thousand dollars was also to be distributed among the chosen beneficiaries “in equal proportions.” Subsequent resolves renewing the 1819 provision further instructed the Secretary to “keep a register” of all applications, fill vacancies with “candidates having the qualifications,” and guarantee students four, and then six, uninterrupted years

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<sup>92</sup> “Resolves Relating to Accounts in the Recess of the General Court,” *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay, Vol. XIX* (Boston: Wright and Potter Printing Co., 1918), Ch. 384, 152-153; Selectmen of Blandford to Bradford, January 6, 1818, Massachusetts Office of the Secretary of State, Returns of the Deaf in Towns, 1817-1827, Massachusetts State Archives; “Pauper Accounts, Roll No. 78, January 1818,” *Resolves of the General Court of the Commonwealth of Massachusetts, Passed at the Several Sessions of the General Court, Commencing May 31, 1815, and Ending February 20, 1819*, 535; Gallaudet to Bradford, April 11, 1821 and May 11, 1824, Massachusetts Office of the Secretary of State, “Transcripts of Administrative Records of Schools for the Deaf, 1819-1874.” The quotation “becoming, after they leave the Asylum...” comes from a report by New Hampshire Representatives following a meeting of school directors and state legislators initiated by Massachusetts Representatives; “To the Senate and House of Representatives,” *Journal of the House of Representatives of the State of New Hampshire at their Session...Commencing Wednesday June 1, 1825* (Concord: Jacob B. Moore, 1825), 70-75. “Governor’s Message,” *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced on the Twelfth Day of January and Ended on the Twenty-Fifth Day of February, Eighteen Hundred and Twenty* (Boston: Russell & Gardner, 1820), 97. For more on poor relief, see footnote 22.

of financial assistance and education. By the end of June 1819, transcripts of the resolve appeared in newspapers across the Commonwealth. By early October, forty-seven submissions from young adults had already arrived at Bradford's office.<sup>93</sup>

As dictated by the legislation, applications emphasized candidates' deafness, poverty, and consequent limited educational and economic prospects. Parents, guardians, and selectmen usually began their letters by describing the circumstances under which their child had become deaf. The Rehoboth selectmen, for example, certified that Pascal Omsbee "had been so from his Berth," while Mary Jackson, mother of Sally, explained that she was "by the Providence of God rendered deaf & dumb at the age of three years at which time she was diseased with a fever." Parents, guardians, and selectmen then noted the family's financial distress and their anxieties about the children's futures. According to Eliphalet Kimball, "the peculiarities of the times, affecting people in trade for the four past years, has made a very material alteration in my circumstances" and thus he was unable to provide his daughter, Augusta, "the privileges which the Asylum affords." John Winslow, writing on behalf of Susan Walker, also gave a detailed financial

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<sup>93</sup> "Resolve respecting Deaf and Dumb," June 19, 1819, *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced on the Twenty-Sixth of May, and Ended the Nineteenth of June, One Thousand Eight Hundred and Nineteenth*, Ch. XLIV, 63-64; "Resolve further providing for the Education of Deaf and Dumb Persons, at the Asylum in Hartford," January 25, 1820, *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced on Wednesday the Twelfth of January and Ended on the Twenty Fifth of February, One Thousand Eight Hundred and Twenty*, Ch. LX, 104-105; "Resolve respecting Deaf and Dumb Persons," February 18, 1825, *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session which Commenced on Wednesday, the Fifth of January, and Ended on Saturday, the Twenty-Sixth of February, One Thousand Eight Hundred and Twenty Five* (Boston: Dutton and Wentworth, 1828), Ch. LXXXIII, 124-125.

account. “Her Father’s Estate being Insolvent,” Winslow wrote, has left Walker with no way to “maintain herself, or be of much benefit to herself or friends.” “A proper education at the Asylum might enable her to support herself,” he held, “and probably relieve the place of her birth from the obligations of her support.” In the meantime, Winslow concluded, Walker was “living chiefly with her said Guardian and at her expense.” To demonstrate their children’s candidacies, parents, guardians, and selectmen adhered to the guidelines of the resolve and emphasized the disabling effects of hearing impairment and indigence.<sup>94</sup>

But their letters did not stop there. Many parents, guardians, and selectmen went further to show why their child was an especially qualified and desirable candidate. Some discussed their child’s intellectual abilities. Aaron Fuller testified that his two boys were “active and intelligent,” while Samuel Foster noted that his son, Horatio, “appears to possess an active mind susceptible of improvements.” The nine residents of Newburyport writing on behalf of Statira Noyes were more direct. “We know it is a general remark that persons of this unfortunate class often discover evidence of uncommon powers of mind,” they claimed, referring to the longstanding idea that the deprivation of one sense caused the others to be heightened. “But humanity & common justice constrain us to bear testimony to the unusual quickness of apprehension, desire of knowledge, & retentiveness manifested in this young girl.” Other correspondents stressed candidates’ eagerness to learn. The

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<sup>94</sup> Documents in support of Pascal Omsbee, Sally Jackson, Augusta Kimball, and Susan Walker, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887, emphases are original.

Sturbridge selectmen asserted that Anna Knapp “seems anxious to receive the benefit of instruction,” while Nathan Dillingham, writing on behalf of his daughter Nancy, explained that she had independently “learned the Elementary Book & Cards used in the Connecticut Asylum” brought home by her sister, a current student.<sup>95</sup>

Some parents, guardians, and selectmen took a different tack and described the potentially negative consequences of withholding education from their children. Samuel May, the Boston Overseer of the Poor, for example, discussed how Thomas Williston’s parents had “lived and died in indigence,” his “Father giving himself up entirely to intemperance” and “removed to our Alms House where he terminated his miserable days.” Williston will remain in his “wretched situation,” May held, unless he can be sent to the asylum and educated. The Wakefield selectmen recounted a similarly harrowing story, warning of the moral repercussions of denying schooling to orphan Ashley Wain. “He is naturally a stout active boy,” they contended, but “bids fair to be a dangerous member of society unless he can be assisted to have some education from the Institution...so that he may be taught to know that he is a moral agent.” Bishop Jean-Louis Lefebvre de Cheverus, writing on behalf of Edward Doran, also noted the adverse effects of rejecting Doran’s request. His father is “old & can hardly move his limbs” and his mother is “weakly,” Cheverus declared. “Should this poor child not be admitted at Hartford, he must go to the Almshouse & there he can have no

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<sup>95</sup> Documents in support of Aaron Fuller Junior and Augustus Fuller, Horatio Foster, Statira Noyes, Anna Knapp, Abigail and Nancy Dillingham, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887.

means of improvement.” Parents, guardians, and selectmen used both praise of educational potential and caution of impending personal and financial disaster to construct compelling applications on their children’s behalf.<sup>96</sup>

Parents and guardians, in particular, ended their letters with heartfelt words of love and affection that employed empathy and sympathy to further advocate for their children. Many expressed deep parental fondness and devotion. Writing about his daughter, Angelina, Israel Davenport asserted that he had a “strong attachment to the child,” while Nathan Adams, guardian of Mary Ann Newhall, discussed his “ardent desire for her welfare and happiness.” Eliphalet Kimball and Rebecca Kimball were especially eloquent. “The feelings of a parent of one of these unfortunates may be easily conceived,” Kimball wrote, “and it will not be thought strange that a greater effort should be made in behalf of such an one than the circumstances of the parent would altogether warrant.” Rebecca Newcomb, the mother of five deaf children, was as expressive. “I can describe my feelings being the fond mother of only five children and never having the pleasure to hear them lisp a single word,” she penned. “[I] hope that som futer day I might have the satisfaction to have some language written by them” so that they are “capable of interacting with the rest.” “Heaven will reward your goodness,” she concluded.<sup>97</sup>

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<sup>96</sup> Documents in support of Thomas Williston, Ashley Wain, and Edward Doran, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887.

<sup>97</sup> Documents in support of Angelina Davenport, Mary Ann Newhall, Augusta Kimball, and the Newcomb family, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887.

### *Bureaucratic and Administrative Regulations*

Faced with these and other impassioned applications, Secretary Bradford began the challenging task of distinguishing young adults who were deserving of educational pensions from those who were not. Although legislation required that he select applicants randomly and administer funding equally, an initial screening process to identify incomplete or inadequate submissions determined which candidates entered the pool of potential beneficiaries.

First, Bradford rejected young adults who lacked the residency or financial requirements or who had sent insufficient claims. He dismissed those without legal settlement in Massachusetts. Edward Doran, for instance, was denied support because “his Father is a foreigner & not naturalized,” even though the family had lived in Boston for the past eighteen months. Bradford also excluded applicants who did not prove financial neediness. Aaron Junior and Augustus Fuller were rejected because Bradford judged their father “able to support them there himself,” despite the father’s claims that he had withdrawn Aaron from the asylum due to financial limitations. Augusta Kimball received a similar verdict, with Bradford asserting that her father was not “destitute & indigent” enough to deserve aid. In addition, Bradford dismissed applications that were incomplete or deficient of the necessary information. His lists of candidates include numerous notations of “no proper certificate,” “certificate not completed,” and “application and certificate improper.” In some cases, these remarks were appended with additional explanations: William T.

Atwood had neglected to specify the name of his fourteen-year-old daughter, while Susan Walker's submission lacked a letter from her town selectmen.

Most often, however, Bradford's notes were broad and vague. In response to a request from Charles Hillar, he simply declared it "informal and defective."<sup>98</sup>

After this initial screening process, dozens of applications remained on Bradford's list of potential students to enroll. For help in narrowing down these candidates further, Bradford reached out to Gallaudet, through Governor Brooks, for advice. On August 16, 1819, Gallaudet replied with additional instructions for selecting and rejecting beneficiaries. His letter began by discussing his reasons for regulating the quantity and quality of state-supported students, which centered on preserving public support for the asylum and the beneficiary program. "It is very important that the provision which the Legislature of Massachusetts has so liberally made should produce the best results," Gallaudet penned, "so that the public at large and those more immediately interested in the welfare of the deaf & dumb may be satisfied that the money appropriated to their relief has been well expended and that confidence in the Asylum...may be produced." As such, Gallaudet insisted that Massachusetts should limit the number of beneficiaries to twenty and adopt enrollment requirements to ensure that only candidates with the potential to make considerable educational improvements were selected. "In

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<sup>98</sup> Documents in support of Edward Doran, Aaron Fuller Junior and Augustus Fuller, "Miss Atwood," Susan Walker, and Charles Hillar, "List of Applications for Admission of Deaf and Dumb to the benefits of the public charity," and "List of those who have applied for the support of the State at the Asylum...& who were not sent," Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887; Bradford to Gallaudet, October 21, 1819 and "A List of Deaf and Dumb of whom certificates have been made," October 20, 1819, Massachusetts Office of the Secretary of State, Transcripts of Administrative Records of Schools for the Deaf, 1819-1874.

some instances,” Gallaudet recalled, “very unfavorable impressions have been produced upon the minds of those who have formed their opinion on the practicability of teaching the deaf and dumb from what they have seen to be accomplished in so imperfect a degree in the education of the more advanced pupils.” To avoid these negative perceptions, he held, Bradford must reject beneficiaries who might retard the progress of others, frustrate the exertions of teachers, or fail to succeed in ways that the public would appreciate. The Directors “think such a regulation will be alike favourable to the interests of the deaf and dumb in your State & also to the prosperity of the Asylum,” he declared.<sup>99</sup>

Gallaudet continued by suggesting specific admission requirements for Bradford to implement. First, Gallaudet noted that beneficiaries should be between the ages of ten and twenty-five. “The very young pupils and also those advanced in years make but very slow progress,” he claimed. Rejecting submissions from those whose “age almost incapacities them for improvement” was thus necessary for the timely advancement of classes, teachers, and other students. Second, as Bradford had explained to the Tripps in his letter regarding their qualifications, Gallaudet insisted that new students should possess intellectual capability and educational experience. “Good natural intellect” and the ability to write “legibly and correctly” were “necessary for the education of a pupil,” he argued, especially if the Massachusetts students were to complete their schooling in the four years

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<sup>99</sup> Brooks to Gallaudet, August 2, 1819 and Gallaudet to Brooks, August 16, 1819, Massachusetts Office of the Secretary of State, “Transcripts of Administrative Records of Schools for the Deaf, 1819-1874.”

provided for by the Commonwealth. Third, Gallaudet stipulated that beneficiaries should be “free from any immorality of conduct.” As he had discussed in the previous year’s annual report, this prerequisite preserved the “domestic happiness” of the “so numerous a family” at the asylum as well as the institution’s good relationship with benefactors, visitors, and town residents. Finally, Gallaudet noted that students’ physical health—their freedom “from any contagious disease”—was essential for the wellbeing of the asylum at large. With these requirements, which the institution had also recently adopted for all new arrivals, Gallaudet assured Brooks that “no efforts shall be spared to carry into effect the object of the generous provision of your Legislature.”<sup>100</sup>

Brooks, Bradford, and other bureaucrats responded positively to Gallaudet’s proposed admissions guidelines. Bradford remarked in a return letter that the enrollment qualifications “seem to be requisite” and promptly sent messages to all candidates requesting confirmation that they met the new terms, hence his letter to the Tripps for more information. Politicians, like Bradford, were overwhelmingly supportive of Gallaudet’s directives for two reasons. First, by sending beneficiaries to a private institution, especially one located in a different state, legislators may have felt obliged to comply with school administrators’ decisions. Considering the pressure that Brooks, Bradford, and other statesmen placed on school managers about other issues—the introduction of mechanical education, for example, which will be

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<sup>100</sup> Gallaudet and Ferry to Brooks, August 16, 1819, and Gallaudet to Bradford, October 27, 1819, Massachusetts Office of the Secretary of State, “Transcripts of Administrative Records of Schools for the Deaf, 1819-1874;” *Second Report of the Directors of the Connecticut Asylum* (Hartford, Hudson and Co., 1818), 4, 7.

discussed later in the chapter—however, reticence does not seem to have been their only motivation. In addition, Massachusetts politicians welcomed Gallaudet's regulations because they aligned with their own desires to fund deaf students at the asylum in hopes that they would not have to support them later through poor relief. As Brooks had stated following the 1819 resolve, the intention of the measure was to render beneficiaries "in as high a degree as practicable, useful to themselves and others." By insisting that accepted students possess health, character, and capacity, legislators and administrators hoped to select and support those who stood the best chance of achieving these goals. In the words of Gallaudet, the regulations helped to ensure that students financed by Massachusetts would "derive the most benefit from the bounty of the State."<sup>101</sup>

Upon receiving applicants' supplemental certificates regarding the new requirements, Bradford began another round of evaluation and elimination, further delimiting the terms of candidacy. He rejected young adults of insufficient age. Beside Anna Knapp's name, for instance, he wrote "over 25" and "not sent," while numerous applicants were marked as "not old enough." Bradford also eliminated those who did not demonstrate intellectual capacity. Nancy Gowan, for example, was denied support because she provided "no certificate of ability as required." Perhaps most commonly, young adults without the designated physical and educational qualifications simply failed to

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<sup>101</sup> Bradford to Gallaudet, August 27, 1819 and Gallaudet to Bradford, May 24, 1820, Massachusetts Office of the Secretary of State, "Transcripts of Administrative Records of Schools for the Deaf, 1819-1874;" "Governor's Message," *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced on the Twelfth Day of January and Ended on the Twenty-Fifth Day of February, Eighteen Hundred and Twenty*, 97.

resubmit their claims following Bradford's communication. His notes of "certificate not completed" and "certificate improper" thus also likely refer to these cases. For instance, both Sally Norris and Samuel Everett failed to send additional documents and were determined to have "no proper certificate" and "certificate not sufficient" respectively. After this second round of selection, on October 20, 1819, Bradford presented Brooks with "a List of Deaf & Dumb of whom certificates have been made...as to their capacity, morals & agreeably to the advice of the Council & the requisitions of the Directors of the Asylum." The register totaled twenty-seven, down from an initial forty-seven candidates, who were "qualified to take the benefit of the Resolve." The following day, Brooks and Bradford, along with the state Quartermaster General and Adjutant General, "cast lots" from among this pool for asylum admission.<sup>102</sup>

The twenty young adults selected as Massachusetts beneficiaries—the Tripps, Sally Jackson, Nancy Dillingham, and Statira Noyes among them—began arriving at the asylum in late October. Although they had all been deemed eligible for enrollment, in their first few months they experienced yet another evaluation to determine whether they indeed were deserving of state support. In their classes, teachers assessed their physical and intellectual capabilities to see whether they truly met the prerequisites and merited both

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<sup>102</sup> "List of Applications for Admission of Deaf and Dumb to the benefits of the public charity," "List of those who have applied for the support of the State at the Asylum...& who were not sent," and documents in support of Sally Norris and Samuel Everett, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887. For more on Nancy Gowan's "insufficient" ability, see: Selectmen of Boston to Bradford, January 14, 1818, Massachusetts Office of the Secretary of State, Returns of the Deaf in Towns, 1817-1827, Massachusetts State Archives. "A List of Deaf and Dumb of whom certificates have been made," October 20, 1819, and "His Excellency the Governor & Secretary, the Q M General..." October 21, 1819, Massachusetts Office of the Secretary of State, "Transcripts of Administrative Records of Schools for the Deaf, 1819-1874."

admission and financial aid. Following this trial period, Gallaudet and other school administrators then informed Bradford and the succeeding Secretary of the Commonwealth Edward Bangs whether they could continue at the asylum or whether their scholarship should be revoked.<sup>103</sup>

Many students were dismissed during this final stage of evaluation. In some cases, it was because they had additional physical impairments that their instructors could not accommodate. In 1826, for example, Gallaudet and Bangs determined that Deborah Parker could “no longer be supported at the Asylum at the public expense” because she had “very singular defects of vision” that there was “no probability any efforts of her instructors will be able to remove.” In other cases, students’ scholarships were rescinded because of immoral or inappropriate behavior. In 1823, Henry Cobleigh and Charles Bishop were suspended from the asylum due to “protracted and incorrigible disobedient & turbulent conduct.” When Gallaudet reported the situation to Bradford, he gave him full discretion over the boys’ future scholarship and enrollment. “The directors unwillingly trouble you on the subject,” Gallaudet wrote, “but they did not perceive how any thing could be done by them, consistently, excepting through the medium of your self.” After communicating with Cobleigh, Bishop, and their parents, Bradford decided that the boys could be readmitted on a second trial period and, if respectable, again be extended state aid.<sup>104</sup>

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<sup>103</sup> Gallaudet to Bradford, January 1, 1820, Massachusetts Office of the Secretary of State, Transcripts of Administrative Records of Schools for the Deaf, 1819-1874.

<sup>104</sup> Gallaudet to Bangs, November 22, 1823, May 11, 1824, November 3, 1826; Bangs to Gallaudet, November 26, 1823 and November 15, 1826; Terry to Bangs, January 2, 1824; Bangs to Lincoln, November 7, 1826; and Bangs to Simeon Parker, November 15, 1826,

Most commonly, Massachusetts legislators and school administrators revoked students' scholarships because they determined that they lacked adequate intellectual capability. Benjamin Tripp was one such case. Less than a month after Tripp's arrival at the asylum, Gallaudet wrote to Bradford regarding his performance. He "appears not to possess capacity sufficient to justify the expectation his future improvement," Gallaudet declared, and "it is barely possible that the avenues to his mind, which is certainly either approaching to idiocy or possessed of some mysterious singularity of character, have not yet been discovered." Although Gallaudet agreed to "make a little further trial with him," he warned that, should this not succeed, "it would be a like unjust towards the bounty of your state & to the labour of the teacher to have him continue." One month after learning that Tripp was "not progressing," Bradford ordered his financial aid rescinded. In his letter to Gallaudet, he also requested notice "hereafter in any like case of incapacity...so that they may be speedily removed lest they obstruct the improvement of others, and involve the State in expence without advantage to themselves or the public."<sup>105</sup>

Other beneficiaries experienced similar fates. In 1826, Orrill Morris was judged to be "hopeless" and denied funding. Over the next two years, Esbon

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Massachusetts Office of the Secretary of State, "Transcripts of Administrative Records of Schools for the Deaf, 1819-1874."

<sup>105</sup> Gallaudet to Bradford, January 1, 1820, February 8, 1820; Bradford to Gallaudet, February 22, 1820; Goodwin to Bradford, March 9, 1920, Massachusetts Office of the Secretary of State, "Transcripts of Administrative Records of Schools for the Deaf, 1819-1874;" "Resolve providing for the Removal of Deaf and Dumb Persons from the American Asylum at Hartford," February 19, 1820, *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced on the Twelfth Day of January and Ended on the Twenty-Fifth Day of February, Eighteen Hundred and Twenty*, Ch. CXVII, 144-145.

D. Bowden, Simeon and Mary Parker, Joseph Vaughan, and Maria Green received like verdicts. School directors and legislators aimed to fund and enroll students whom they believed had the potential to make significant educational improvements and lead economically productive and socially “useful” lives following graduation. Additional physical and intellectual impairments and suspect moral behavior were all seen as reasons why students might not “produce the best results.” Thus, those displaying these characteristics were soon labeled as unworthy and denied both admission and financial aid to make room for more promising candidates.<sup>106</sup>

Massachusetts politicians combined their support of admissions requirements with another initiative designed to generate productive, self-sufficient asylum graduates. Although the asylum had been founded to provide religious and intellectual instruction, as early as 1820, administrators expressed interest in offering “horticultural and mechanical” training. As they explained to donors, these pursuits would “furnish all with some useful and healthy exercise out of school-hours, and those who are poor, with such habits of industry, as will enable them to be in the way of procuring a future livelihood.” Despite these objectives, subsequent annual reports described the financial and practical challenges—from start-up costs to class scheduling—of offering such activities. A conference between school officials and legislators

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<sup>106</sup> Gallaudet to Bangs, April 26, 1826, November 3, 1826, April 14, 1828, and November 12, 1829; Bangs to Gallaudet, May 1, 1826, November 15, 1826, April 19, 1828, and November 16, 1829; Bangs to Lincoln, April 27, 1826; Bangs to Morris, May 4, 1826; Bangs to Selectmen of Sturbridge, May 4, 1826; Bangs to Boyden, November 15, 1826; Bangs to Parker, April 18, 1828; Bangs to Vaughan, April 18, 1828; Lincoln to Bangs, November 14, 1829; Bangs to Selectmen of Warwick, November 16, 1829, Massachusetts Office of the Secretary of State, “Transcripts of Administrative Records of Schools for the Deaf, 1819-1874.”

from Massachusetts and four other New England states, spearheaded by two Massachusetts Representatives and held in 1825, however, helped to renew and intensify the directors' commitment.<sup>107</sup>

As an annual report by school administrators later described, the conference involved a "very minute and full investigation" of the institution's curriculum and expenses, and the passage of resolves intended "*to do the most good, and in the most effectual way, to the Deaf and Dumb of our common country.*" School managers and legislators agreed on two primary resolutions: first, politicians consented to increase their financial support of poor students at the asylum; second, school directors agreed to expand their offerings in "some useful art or trade, whereby [students] may be enabled to support themselves by their labor." Such an arrangement furthered the aims of both legislators and school administrators and strengthened their relationship. As such, when Gallaudet wrote to Bangs two years later that "all the male pupils now in the asylum are learning a trade [and] the girls are employed in some extent in domestic concerns," Bangs responded by declaring his "continued confidence" in "the character of the Institution" and "your instrumentality in its success."<sup>108</sup>

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<sup>107</sup> "Fourth Report of the Directors of the American Asylum at Hartford" (Hartford: Hudson & Co., 1820), 4, 5; "American Asylum for Deaf and Dumb, Seventh Report," *The Missionary Herald*, September 1823; "Eighth Report of the Directors of the American Asylum at Hartford" (Hartford: W. Hudson and L. Skinner, 1824); "Resolve appointing a Committee to confer with the Directors of the Asylum at Hartford, respecting Deaf and Dumb pupils," June 11, 1824, *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, Commencing May, 1824 and Ending March, 1828* (Boston: Dutton and Wentworth, 1828), Ch. XVIII, 47. For a detailed account of the 1825 conference, see: "To the Senate and House of Representatives," *Journal of the House of Representatives of the State of New Hampshire at their Session...Commencing Wednesday June 1, 1825*, 70-75.

<sup>108</sup> "To the Senate and House of Representatives," *Journal of the House of Representatives of the State of New Hampshire at their Session...Commencing Wednesday June 1, 1825*, 70-75; "Ninth Annual Report of the Directors of the American Asylum at Hartford," (Hartford, W.

As politicians and administrators worked to limit beneficiaries to those who would become “useful members of the community,” hearing impaired young adults and their parents, guardians, and benefactors worked to mitigate these constraints and advocate for their candidacies. Many applicants who were rejected in 1819 reapplied immediately or in subsequent years. The Fuller brothers, for example, who were deemed to be insufficiently destitute, resubmitted their request in 1824. As their father explained in his second petition, after the boys were rejected, he had enrolled Aaron anyway and “struggled through the expense of board and tuition...for three years.” Two years ago, however, financial limitations had forced him to remove his son and now, Aaron Senior lamented, “I regret that he is gradually loosing his signs.”<sup>109</sup>

The following year, Elijah Knight submitted a third request on behalf of his son, Cyrus Lovell. After Cyrus’ 1819 application was deemed to be “not sufficient,” Elijah sent a letter in 1821 detailing his “distressing” financial situation and another in 1825 describing his son’s “health and capacity” and his own status as a “Citizen of said Commonwealth more than forty years.” Daniel Day submitted as many appeals on behalf of his daughter, Anna. In his third request, he even chose not to include a letter from his town selectmen as

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Hudson and L. Skinner, 1825), 3-8, emphases are original; “Resolve respecting Deaf and Dumb persons, February 18, 1825,” *Supplements to the Revised Statutes. Laws of the Commonwealth of Massachusetts Passed Subsequently to the Revised Statutes*, eds. Theron Metcalf and Luther S. Cushing (Boston: Dutton & Wentworth, 1849), Ch. LXXXIII, 334-335; Gallaudet to Bangs, July 11, 1827 and Bangs to Gallaudet, April 19, 1828, Massachusetts Office of the Secretary of State, “Transcripts of Administrative Records of Schools for the Deaf, 1819-1874.”

<sup>109</sup> Documents in support of Aaron Fuller Junior and Augustus Fuller, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887.

required. "As no change has taken place in my own circumstances," Day stated, "I have not supposed it necessary for me to procure a renewal of the certificates...but only to refer to those now on file." Often these relentless appeals worked; by 1826, the Fullers, Knight, and Day were all enrolled at the asylum. Other candidates either gave up or decided not to attend the asylum by the time aid arrived. After filing two unsuccessful claims in 1819, for example, Flavia Robinson surrendered her spot when it was granted to her in 1821. As an old neighbor informed Bradford, she was now living in Stephentown, New York and no longer interested in attending the school.<sup>110</sup>

Parents and guardians of students who were dismissed after trial periods at the asylum, perhaps surprisingly, rarely explicitly negotiated these decisions on their children's behalf. Nevertheless, many communicated their dissatisfaction and desire for their children to remain enrolled in subtler ways. After receiving notification of their child's ineligibility, parents and guardians often delayed in collecting their children or making plans for their travel home. Sometimes this hesitation was due to financial concerns. After hearing of Tripp's expulsion, for example, Goodwin wrote to Bradford that "Mr. Tripp, being very poor, is totally unable to remove his said Son from Hartford & I am unable to say who will do it." In this and other cases of extreme poverty, the state usually paid for students' return trips home.<sup>111</sup>

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<sup>110</sup> Documents in support of Cyrus Lovell Knight and Anna Day, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887; Gallaudet to Bradford, December 1, 1821, and Bangs to Gallaudet, July 6, 1825, in Massachusetts Office of the Secretary of State, "Transcripts of Administrative Records of Schools for the Deaf, 1819-1874."

<sup>111</sup> Documents in support of Jacob Tripp Junior and Benjamin Tripp, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887; "Resolve providing for the Removal of Deaf and Dumb Persons from the American Asylum at Hartford," February

Other times, however, parents and guardians seemed to purposefully postpone sending for their children in hopes that they might make the necessary improvements and be allowed to stay. Sally Morris, mother of Orrill, for example, took over one month to arrange for her removal, inducing Bangs to inform Gallaudet that “we will take Orrill away if not measures taken by her friends.” Maria Green, who was dismissed after being deemed “manifestly destitute of common capacity,” found herself in a similar situation, appearing on a list of students more than two months after her expulsion. Following Green’s departure, Gallaudet even proposed a new inducement for parents and guardians to collect their children more “expeditiously.” Referencing Green’s case, Gallaudet remarked to Bangs, “if they were told (pardon my freedom) that if she were not removed within a reasonable time, [they] would have to be at the expense of her continuance, it might lead them to send for her immediately.” Parents’ delay in retrieving their expelled children may have been another more understated way that they negotiated admissions restrictions and advocated for their children’s education.<sup>112</sup>

### *Medicalization and Further Regulation at the New England Institution*

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19, 1820, *Resolves of the General Court of the Commonwealth of Massachusetts Passed at their Session, which Commenced on the Twelfth Day of January and Ended on the Twenty-Fifth Day of February, Eighteen Hundred and Twenty*, Ch. CXVII, 144-145.

<sup>112</sup> Documents in support of Orrill Morris, Massachusetts Office of the Secretary of State, Applications for Instruction of the Deaf, 1819-1887; Gallaudet to Bangs, April 26, 1826, November 12, 1829, and November 28, 1829; Bangs to Gallaudet, May 31, 1826 and December 21, 1829, Massachusetts Office of the Secretary of State, “Transcripts of Administrative Records of Schools for the Deaf, 1819-1874.”

When Doctor John Dix Fisher of Boston proposed that a school for visually impaired young adults be established in Boston in 1829, Massachusetts legislators—now accustomed to the role of government in selecting and rejecting students and shaping school curriculum, management, and objectives—became involved in its founding and administration from the very beginning. Drawing on their experience of regulating and negotiating with beneficiaries at the American Asylum, statesmen implemented provisions to reduce contestations between students, parents, legislators, and administrators and better fulfill their social and economic objectives.<sup>113</sup>

Bureaucrats held prominent positions in the New England Institution from its outset. Speaker of the Massachusetts House William Barron Calhoun and Representative John Phillips were present at the first meeting to discuss the possibility of a school and its primary goals. The latter also served as chairman of the committee to determine how best to promote the school and its formation. In addition, the act to incorporate the institution, passed on March 2, 1829, outlined substantial roles for politicians in the school's management. Section 3 provided that the legislature could enroll students they "may think proper" without explicit approval from school directors. Section 6 also stipulated that politicians would comprise the institution's board of visitors, which held the authority to appoint four trustee positions, visit the school "semi-annually, and as much oftener as they may think proper," and inspect the school's bylaws and regulations "to see that the object of the said

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<sup>113</sup> "The New-England Asylum for the Blind, Instituted in February, 1829" (Boston, 1829); "An Act to Incorporate the New England Asylum for the Blind," March 2, 1829, Massachusetts Office of the Secretary of State, Transcripts of Returns of the Perkins Institution, 1829-1884, Massachusetts State Archives.

institution is carried into effect.” Taking an early and active role in the foundation and administration of the New England Institution, legislators worked to circumvent some of challenges that plagued the placement of beneficiaries at the American Asylum and, together with school managers, develop the best methods of producing socially and economically self-sufficient graduates.<sup>114</sup>

Due in part to legislators’ involvement, the original and explicit objective of the New England Institution was to provide students with the skills to labor and earn a living. An 1833 public address by Samuel Gridley Howe, the school’s first director, reveals such aims. Howe began by emphasizing the need for an institution to provide blind people with “the means of becoming an enlightened, happy and useful member of society” and “of earning their own livelihood, or at least of doing much towards it.” He noted the “direct and indirect tendency of blindness to produce pauperism” and, after outlining the often misguided approaches of European asylums for the blind, how the New England Institution intended to “qualify the blind to act a useful part in society” by adapting students’ curriculums to their social and economic situations.

“Those who are fortunate enough to be above any pecuniary wants may occupy themselves entirely with the development of their mental faculties,” he explained, but “those whose principal dependence must be on themselves” will focus on their future occupations, which would be selected according to their skills, local economic circumstances, and so as not to compete with seeing laborers who might outperform them. By rehabilitating students for

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<sup>114</sup> Ibid.

labor and financial independence, Howe urged the public to support the institution not only out of charity but also for their own economic interest. “The object is an economic one to the community,” he proclaimed. “It is to take from society, so many *dead weights*...and enable them to get their own livelihood: and society ought to consider any capital so invested as a *sinking fund* for the redemption of its *charitable debt*; as a provision for preventing the blind from becoming taxes to the community.” This focus on schooling blind students for labor and self-sufficiency was not only an objective that Massachusetts legislators helped to initiate, but also one that they could enthusiastically endorse.<sup>115</sup>

Political leaders also worked to clarify and strengthen the requirements for the admission of beneficiaries to the New England Institution. Like the 1819 “Resolve respecting Deaf and Dumb,” the “Resolve in behalf of the Trustees of the New England Asylum,” passed on February 16, 1833, provided for twenty state-sponsored students and stipulated that the Secretary of the Commonwealth, still Bangs, would select applicants for admission “by lot.” However, it included numerous additional regulations. Legislators now required that candidates had to be sufficiently “poor,” “within the prescribed ages,” and aligned with the “standing by-laws of the Asylum.” In addition, it gave the Secretary of the Commonwealth the power to admit and dismiss beneficiaries at will. The bylaws of the New England Institution, adopted that same year by the trustees, outlined still more enrollment

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<sup>115</sup> “To the Public,” Samuel Gridley Howe, *Address of the Trustees of the New-England Institution for the Education of the Blind to the Public* (Boston: Carter, Hendee and Co., 1833), 4-6, 13-16, emphases are original.

requirements, most applicable only to beneficiaries. While “pupils not beneficiaries” simply had to provide “sufficient evidence of their fitness for” the asylum, beneficiaries had to submit documentation of their visual impairment, physical and cognitive capacity, and moral character. As with the American Asylum, applicants submitted testimonials of their qualifications from parents or guardians and town selectmen. In addition, they were required to send certificates of their “incurable blindness” from a “respectable physician of regular standing.” Thus, doctors were incorporated into the partnership between school administrators and bureaucrats that selected students for asylum enrollment.<sup>116</sup>

The trustees decided to mandate doctors’ evaluations for numerous reasons. First, support likely came from Fisher and Howe, trained physicians who had studied together at the Massachusetts Medical College at Harvard. Fisher had learned about blind education while furthering his medical studies in Paris and, after returning to Boston and founding the New England Institution, remained active in medical practice and research throughout his life. Although Howe had, as he proclaimed, less “faith in medicine,” both men nevertheless considered instruction for the blind to be a medical endeavor yielding significant research and results. Second, the trustees, familiar with controversies surrounding the admission of beneficiaries to the American Asylum, must have believed that doctors’ examinations would provide an

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<sup>116</sup> “Resolve in behalf of the Trustees of the New England Asylum for the Blind,” February 16, 1833, *Resolves of the General Court of the Commonwealth of Massachusetts, Passed at their Session, which Commenced on Wednesday the Second of January and Ended on Thursday the Twenty-Eighth of March, One Thousand Eight Hundred and Thirty-Three* (Boston: Dutton and Wentworth, 1832), Ch. XXVIII, 338-339; *By-laws, Rules and Regulations of the New-England Institution for the Education of the Blind, Incorporated 1829* (Boston: J. R. and E. Buckingham, 1833), 5, 11-12.

additional check on applicants' merits. Physicians were asked to report whether candidates were "incurably" and "totally" blind, both conditions that warranted their exemption from state support. In addition, doctors were supposed to evaluate applicants' "freedom from any epileptic or contagious disorder, or from any physical affliction that would render them unfit inmates with others," which legislators and administrators of the American Asylum had attempted to ascertain without involving medical experts. In 1833, with the continued growth of the American medical profession, trustees of the New England Institution considered participation from physicians both useful and appropriate.<sup>117</sup>

As with pension applications, physicians generally aligned their reports on beneficiaries with legislative and administrative guidelines. Many followed the regulations in the bylaws perfectly. Doctor Adams Nichols of Gloucester, for example, confirmed that Elizabeth Briggs "is incurably blind, also that she is free from any epileptic or contagious disorder, or from any physical affliction that would render her an unfit inmate with others." In some cases, physicians went above and beyond the requirements and provided supplementary information. Edward J. Davenport, Assistant Surgeon to the Massachusetts Eye & Ear Infirmary, for instance, specified that candidate Jacob Rollock was "incurably blind" because he had "the misfortune to be deprived of his vision

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<sup>117</sup> French, *Perkins School for the Blind*; James W. Trent Jr., *The Manliest Man: Samuel G. Howe and the Contours of Nineteenth-Century American Reform* (Amherst and Boston, MA: University of Massachusetts Press, 2012); Ernest Freeberg, *Laura Bridgman: First Deaf and Blind Person to Learn Language* (Cambridge, MA and London, England: Harvard University Press, 2001); *By-laws, Rules and Regulations of the New-England Institution for the Education of the Blind, Incorporated 1829*, 5, 11-12; Howe to J. L. Caffelain, Esq., April 8, 1852, reprinted in Laura E. Richards, ed., *Letters and Journals of Samuel Gridley Howe, The Servant of Humanity* (Boston: Dana Estes & Company; London: John Lane, 1909), 42-44.

from an attack of inflammation of both his Eyes.” Doctor Orrin Wright of Pittsfield also discussed his experience caring for the family of applicant Sarah Clough, whose parents had both “died some years since of consumption and poor health.” Despite their health concerns, Wright stressed, Sarah had “incurable” blindness and was a “fit” candidate.<sup>118</sup>

In other cases, physicians’ reports posed challenges for Bangs, Howe, and other officials and administrators who admitted students. Sometimes doctors forgot to include the necessary information in their reports. Doctor Thaddeus Brown of Billerica, for example, confirmed that Lydia Saunders was “free from any contagious disease” and “has been such as not to require medical aid,” but neglected to describe her blindness, causing Howe to append a note to her application asserting that she “appears incurably blind and a fit subject for the benefit of the state charity.” Other times, Howe, drawing on his medical training, determined that examining physicians were incorrect in their assessments. After Doctor Pierson J. Kendall recommended Caroline Sawyer for enrollment, for example, Howe conducted his own evaluation and found that her “blindness [was] not total: she possessing sufficient light to guide herself.” He thus advised Bangs to only extend her support temporarily until “more than twenty totally blind will present

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<sup>118</sup> Documents in support of Elizabeth Briggs, Jacob Rollock, and Sarah Clough, Massachusetts Office of the Secretary of State, Applications for Admission to the Perkins Institution, 1833-1861, Massachusetts State Archives.

themselves, whose claims would be much stronger those of Caroline Sawyer.”<sup>119</sup>

Politicians’ experiences with beneficiaries at the American Asylum also led them to intensify the trial periods for state-supported students at the New England Institution. Like at the American Asylum, many students had their scholarships revoked once they had arrived at the New England Institution and were found to be cognitively or physically unfit. Elizabeth Bickford and James Ruggles, for example, were both denied admission and financial assistance after Howe judged them to be “fast sinking into idiocy” and in states of “premature mental decay.” In addition to these exclusions once students had arrived, Bangs and Howe funded and enrolled some students on explicitly probationary bases. Such was the case with Sawyer, whose scholarship was “expressly made revocable at the pleasure of the Governor, whenever the number of applicants, who, from total blindness, have preferable claims to the benevolent provisions of the Government, shall amount to twenty.” Benjamin Bowen, too, was admitted on a temporary contract due to his suspect moral character. As Howe explained, Bowen’s “vicious habits” and “vicious companions” might not “make him a fit inmate with other pupils.” As such, Bangs extended Bowen support on provisional terms, it being “expressly understood” that his funding would cease upon any indication of “unfavorable” behavior. During their first year of enrollment, both Sawyer and Bowen proved their worth and retained their scholarships. In

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<sup>119</sup> Documents in support of Lydia Saunders and Caroline Sawyer, Massachusetts Office of the Secretary of State, Applications for Admission to the Perkins Institution, 1833-1861, Massachusetts State Archives, emphases are original.

December 1834, Howe reported to Bangs that Sawyer had “learned many things” and, despite an unpleasant incident in which Bowen was sent home, he had now returned and was “doing very well.”<sup>120</sup>

Of course, despite these increased regulations, negotiations with students and their parents, guardians, and benefactors continued. Beneficiary applicants who were not extended support often asked for petitions on their behalf. George Lanman, for example, sent multiple requests regarding the application of Anson Penniman, a candidate who was initially rejected because his age was not specified but who went on to become a successful graduate and teacher at the Pennsylvania Institution for the Instruction of the Blind. As Lanman stated in his second appeal, Penniman, who became blind “by the bursting of a bottle containing Oil Vitrial” during his employment at a drug store, is “waiting impatiently to hear your determination” and will forward any additional documents “without delay.”<sup>121</sup>

Students who were expelled during their probationary periods also often attempted to negotiate their cases. After Benjamin Bowen was suspended for “dirty and profane” habits, he petitioned Howe with promises to reform and was subsequently readmitted with state support. In an annual report on the Massachusetts beneficiaries, Howe also informed Bangs that Mary Little, who had recently been dismissed on account of “indolence,” had “signified a wish to return.” Howe, however, advised Bangs to reject her

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<sup>120</sup> Bangs to Howe, May 8, 1833; Howe to Bangs, December 1823, February 20, 1834, and December 22, 1834, Massachusetts Office of the Secretary of State, Transcripts of Returns of the Perkins Institution, 1829-1884.

<sup>121</sup> Documents in support of Anson Penniman, Massachusetts Office of the Secretary of State, Applications for Admission to the Perkins Institution, 1833-1861.

request because “it would be little desirable for the others.” While the expanding restrictions regarding the admission of beneficiaries to the New England Institution limited the opportunities of some candidates, others, with support from their parents, guardians, and benefactors, continued to advocate for themselves and their deservingness of state-sponsored educational aid.<sup>122</sup>

The regulations imposed by Massachusetts legislators and administrators at the American Asylum and the New England Institution concerning beneficiary selection—and the resistance they faced from young adults and their advocates—constructed disability as another state category of social welfare. Politicians initially intended to evaluate American Asylum beneficiary applicants based on the disabling effects of their hearing impairment and poverty and to dispense aid randomly and equitably among those who were qualified. Faced with dozens of submissions and the knowledge that only twenty beneficiaries could be admitted, however, statesmen—in consultation with school directors—implemented additional regulations designed to distinguish the most deserving candidates. Their primary criterion was that beneficiaries have the potential to advance in their education and become laboring, economically independent citizens after graduation—accomplishments that the public would applaud and fiscally support. Thus, the category of disability in beneficiary legislation and implementation became linked not only to impairment and laboring incapacity, but also to the promise of social and economic rehabilitation. Deaf and blind

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<sup>122</sup> Howe to Bangs, December 22, 1834, Massachusetts Office of the Secretary of State, Transcripts of Returns of the Perkins Institution, 1829-1884.

young adults and their allies navigated these intensifying strictures in support of their candidacies. The requirement that applicants for state assistance at the New England Institution submit medical reports in 1833 was one of many new policies that made it more difficult for them to advance alternative conceptions of their disabilities and capacities and advocate on their behalf.

## Chapter 4, Legal Restrictions on People with Intellectual Impairments

In 1817, Benjamin Chase appealed to the Supreme Judicial Court of Massachusetts that he was not “an idiot, non compos, lunatic, or distracted person” and that he had been wrongly and improperly assigned a guardian to take care of his personal estate and affairs. Like many individuals contesting their placement under guardianship before him, Chase proposed several arguments to support his case. He contended that he was not “of unsound mind” and “incapable of taking care of himself,” that he had not been properly notified and was thus unprepared for the town selectmen’s visit to his house to determine his sanity, and furthermore that the appointed Barzillai Hathaway “was not a suitable person to be a guardian.” Hathaway, in response, maintained that the guardianship arrangement had been approved by a judge of probate, and thus was surely executed according to “every necessary and proper measure.” He also noted that it was “worth consideration, too, what desirable effect notice to a person *non compos*...can produce.”<sup>123</sup>

Chief Justice Isaac Parker detailed the case proceedings and the Court’s verdict in a lengthy report. First, he explained that the Court would not offer judgment on Chase’s cognitive capabilities because these could be more accurately determined by a judge of probate. Instead, Parker held, their ruling would focus on the procedures by which Chase had been deemed to be an “idiot” in need of a guardian. As “the presumption of law is that every man is of sound mind until the contrary is proved,” Parker asserted, “indeed it would

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<sup>123</sup> “Benjamin Chase, Appellant, &c., versus Barsillai Hathaway,” July 1817, in Dudley Atkins Tyng, Esq., ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts*, Vol. XIV (Boston: Charles C. Little and James Brown, 1851), 221-226.

seem strange that the whole estate of a citizen might be taken from him, and committed to others, and his personal liberty be restrained...unless all the formalities of a trial were secured to him by the forms of process." As such, Parker announced on behalf of the Court, "we are clear that [advance notice of guardianship] ought to be given before the adjudication in Probate Court, and that without it such adjudication is null and void." Thus, for the time being, Chase retained his legal personhood and was not considered to be an "idiot, *non compos*, lunatic, or distracted person" or assigned to Hathaway's custody.<sup>124</sup>

Chase's evasion of guardianship and the labels of idiocy and lunacy had significant consequences for him, his wife, and his six children in the years ahead. Throughout the early nineteenth century, the legal rights and privileges of people under guardianship and with perceived cognitive impairments were considerably constrained. The laws of Massachusetts, which would have directly affected Chase, offer a case in point. In 1815, two years prior to *Chase v. Hathaway*, the state Supreme Court followed English legal precedent and enforced restrictions on the marriage of people deemed to be intellectually incompetent, nullifying the union of Ebenezer Winslow and Susannah Thomas upon finding that Winslow was *non compos mentis* and under custody at the time of the ceremony. In 1821, four years after Chase's case, delegates at a state Constitutional Convention decided that persons under guardianship were ineligible to "vote for any officer under the government." Thirteen years later, Massachusetts erected a Lunatic Hospital

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<sup>124</sup> Ibid.

and, soon after, required all individuals deemed to be insane to be confined either there or in county correction houses regardless of their social or economic circumstances or behavior. And, in 1837, the Commonwealth strengthened provisions prohibiting “lunatic, idiot, maimed, aged, or infirm persons” from immigrating to the state from abroad. By avoiding guardianship and the designations of idiocy and lunacy, Chase, as a propertied white male, enjoyed the attendant expanded legal privileges over the course of his lifetime. If the Court’s verdict had been otherwise, however, Chase would have found himself relegated to the category of disabled, with increasingly limited legal rights.<sup>125</sup>

While the two previous chapters studied the creation and regulation of disability as a category of federal and state social welfare, this chapter examines disability as an emerging governmental classification of exclusion, limitation, and restriction. In the decades after the Revolution, state courts and legislatures passed numerous provisions to enforce and strengthen the legal proscriptions on people deemed to be cognitively disabled that were outlined in early modern English law and variably implemented in the colonies. As a

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<sup>125</sup> “Benj Chase, Berkley, Bristol, Massachusetts,” in *1810 United States Federal Census*, Roll 17, Page 415, Image 00207, Family History Library Film: 0205625, Ancestry.com; “The Inhabitants of Middleborough versus The Inhabitants of Rochester,” July 1815, Dudley Atkins Tyng, Esq., ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts, Vol. XVII* (Boston: Little, Brown and Company, 1864), 363-364; *Journal of Debates and Proceedings in the Convention of Delegates, Chosen to Revise the Constitution of Massachusetts, Begun and Holden at Boston, November 15, 1820 and continued by Adjournment to January 9, 1821* (Boston: Office of the Daily Advertiser, 1831), 122, 277; “Resolve for Erecting a Lunatic Hospital,” March 10, 1830, *Resolves of the General Court of the Commonwealth of Massachusetts, Passed at the Several Sessions of the General Court, Commencing May, 1828 and Ending June 1831* (Boston: Dutton & Wentworth, 1831), 296-297; “An Act to Provide for the Confinement of Idiots and Insane Persons,” April 13, 1836, and “An Act Relating to Alien Passengers,” April 20, 1837, in Theron Metcalf and Luther S. Cushing, eds. *Laws of the Commonwealth of Massachusetts, Passed Subsequently to the Revised Statutes, 1836 to 1849 Inclusive* (Boston: Dutton & Wentworth, 1849,) 4-5, 52-53.

result, these individuals experienced a dramatic decrease in their rights. Focusing on lawsuits and legislative resolves concerning cognitive disability in Massachusetts, this chapter finds that the legal category of disability initially comprised individuals who were unable to labor or considered to be socially threatening or dangerous but soon expanded to encompass all those determined to be intellectually deficient. As such, while the conception of disability debated in the previous chapters focused almost exclusively on laboring capacity, this chapter shows how the category expanded beyond those who could not labor to include—or exclude—all who showed signs of cognitive impairment.

Like invalid pension claimants and hearing and visually impaired students, people who were found to be cognitively disabled resisted these mounting strictures using the power of the courts, print, and physical resistance. Due to their efforts, many judges and bureaucrats acknowledged the variability and subjectivity of the category of disability and displayed reluctance to declare people insane and place them under guardianship. Nevertheless, the intensifying legal proscriptions, which increasingly applied to all people with perceived cognitive impairments regardless of their laboring capability, made it difficult for disabled people to negotiate for and retain their rights. As in the previously-examined invalid and educational pension cases, by the 1830s, physicians became the primary evaluators of cognitive capacity upon whom judges and bureaucrats relied to articulate and implement these restrictions and to commit those they identified as disabled to institutions.

### *Legal Restrictions and Exclusions*

One of the first and most significant legal limitations placed on Massachusetts residents with perceived cognitive impairments following the Revolution was their mandated confinement in “houses of correction.” According to an act passed in 1798, “lunatics” and people “furiously mad” were to be committed to these institutions, which had been established as early as 1699. Already, the Commonwealth held town selectmen responsible for constructing correction houses and detaining all those who “neglect[ed] their callings or employment, misspend what they earn, & do not provide for themselves or the support of their families.” This included “runaways, stubborn servants or children, common drunkards” and “all rogues, vagabonds, & idle persons, going about in any town or place in the County, begging.” Once committed, these individuals were to work for reduced wages and receive punishment with shackles and fetters. When “lunatics” who were deemed to be “dangerous to the peace or the safety of the good people” were included among those assigned to correction houses, they became subject to all these regulations. According to the 1798 provision, they were “there to be detained till he or she be restored to his right mind or otherwise delivered by due course of law.” With this legislation, a wave of incarceration of people with perceived intellectual impairments, especially those who were socially disruptive or unable to maintain themselves by labor, began across the state. Although people with cognitive differences had occasionally experienced

confinement and physical restraint in previous years, the practice now became standardized, authorized, and widespread.<sup>126</sup>

An 1829 survey—conducted by Secretary of the Commonwealth Edward Bangs, who had also assessed beneficiaries for asylum enrollment—reveals the extent of the detention of intellectually-impaired people after the Revolution and before the establishment of insane asylums. This survey required selectmen across Massachusetts to report “the number, age, sex, and color of all persons reported to be Lunatics and furiously mad, belonging to their respective towns, whether at large or in confinement, and where and how long confined.” After receiving submissions from 112 towns, Bangs provided a summary to the General Court. He calculated that there were 238 lunatics in the Commonwealth, 146 of whom were lodged in poorhouses, correction houses, jails, and private homes. Although a few of these individuals had been incarcerated for as long as 45 years, most had been confined for 20 to 30 years (beginning just after 1798) or for shorter intervals

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<sup>126</sup> “An Act in Addition to an Act for Suppressing and Punishing of Rogues, Vagabonds, Common Beggars, and Other Idle, Disorderly, and Lewd Persons,” February 27, 1798, *Acts and Laws of the Commonwealth of Massachusetts* (Boston: Young & Minns, 1896), 450-451; “An Act for Suppressing and Punishing of Rogues, Vagabonds, Common Beggars, and Other Idle, Disorderly, and Lewd Persons,” 1699, *Acts and Resolves Passed by the General Court* (Boston: Secretary of the Commonwealth, 1699). This act was renewed after the Revolution; see: “An Act for Suppressing and Punishing of Rogues, Vagabonds, Common Beggars, and Other Idle, Disorderly, and Lewd Persons,” March 26, 1788, *The Laws of the Commonwealth of Massachusetts, from November 28, 1780 to February 28, 1807* (Boston: J. T. Buckingham, 1807), 411-413. Some states included cognitively-impaired people in correction house legislation in the colonial period. In 1727, for example, Connecticut stipulated that selectmen could commit “persons under Distraction and unfit to go at Large, whose Friends do not take care for their safe Confinement” to workhouses; see: “An Act for Suppressing and Punishing of Rogues, Vagabonds, Common Beggars, and Other Lewd, Idle, Dissolute and Disorderly Persons; and for setting them to Work,” 1727, *Acts and Laws, of His Majesties’ Colony of Connecticut in New-England, Passed by the General Assembly May 1716-1749*, 344. For more on the confinement of people with cognitive impairments, see: Jimenez, *Changing Faces of Madness*; James W. Trent, Jr., *Inventing the Feeble Mind: A History of Mental Retardation in the United States* (Berkeley, Los Angeles, London: University of California Press, 1994), ch. 1.

(occurring more recently in the 1820s). Although Bangs' report did not include such evaluations, the surveys indicate that men and women were imprisoned at equal rates and most of those detained were of middle age, between 25 and 50. In addition, many were confined periodically—for example, only at night, in the winter, or, as the Hinsdale selectmen wrote about a 35-year-old man, “whenever we can get him kept.” According to an address by Horace Mann, Bezalel Taft Jr., and William Barron Calhoun (who was also involved in the management of the New England Institution for the Education of the Blind) to the Massachusetts legislature in 1832, few of those incarcerated were ever released. As they declared, “[we have] never heard of more than three or four instances of restoration” and social reintegration.<sup>127</sup>

Motivated by the number of “lunatics” recorded in the 1829 survey, as well as the prevalence of their detention, Massachusetts politicians soon passed additional legislation to regulate their treatment, promote rehabilitation, and cement the confinement of those who could not be cured. In 1830, the General Court authorized the construction of a state Lunatic Hospital in Worcester; in 1832, it mandated that all cognitively-impaired people then at county correction houses be relocated to this facility. Statesmen’s motivations for founding a Lunatic Hospital were partly based on humanitarian impulses and partly based on a desire to remove and exclude these people from the populace. Many legislators were alarmed at the

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<sup>127</sup> “Returns of Lunatics Living in Towns, 1829-1830” and “Schedule of Returns,” Massachusetts Office of the Secretary of State, Massachusetts State Archives; “Report of Commissioners Appointed Under a Resolve of the Legislature of Massachusetts to Superintend the Erection of a Lunatic Hospital at Worcester and to Report a System of Discipline and Government for the Same,” January 4, 1832 (Boston: Dutton and Wentworth, 1832), 13.

abhorrent treatment of those detailed in the 1829 returns. Mann, Taft, and Calhoun's address, for example, recounted harrowing stories, such as a man "found in an apartment in which he ha[d] been nine years" with "no orifice for the admission of light, heat, or air." The politicians used such accounts to rally support for the institution, which, they held, "cannot fail to afford recovery and relief to large class of unfortunate sufferers." Legislators also supported the establishment of the Hospital as a means to remove those viewed as socially disruptive or "unproductive" from their communities. Mann, Taft, and Calhoun, for example, discussed how town selectmen were unprepared to manage people with intellectual ailments and how doctors, familiar with the new and improved methods for treating insanity, would provide better care. In this vein, their report discussed the "strength and security" of the Hospital's walls, its "system of discipline and government," and its limited visitation policy for patients' families and friends.<sup>128</sup>

The 1830 "Resolve for Erecting a Lunatic Hospital" launched a wave of new legislation to standardize and expand the confinement of people determined to be cognitively impaired. Significantly, while some of these acts applied to individuals who were seen as socially disruptive, dangerous, or unable to labor or function in society, others authorized the incarceration of

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<sup>128</sup> "Resolve for Erecting a Lunatic Hospital," March 10, 1830, *Resolves of the General Court of the Commonwealth of Massachusetts passed at the Several Sessions of the General Court Commencing May, 1828 and Ending January, 1831* (Boston: Dutton and Wentworth, 1831), 296-297; "Report of Commissioners Appointed Under a Resolve of the Legislature of Massachusetts to Superintend the Erection of a Lunatic Hospital at Worcester and to Report a System of Discipline and Government for the Same," January 4, 1832 (Boston: Dutton and Wentworth, 1832), 13; "An Act Concerning the State Lunatic Hospital," March 24, 1832, *Laws of the Commonwealth of Massachusetts Passed at the Several Sessions of the General Court Beginning May, 1831 and Ending March 1833, Vol. XII* (Boston: Dutton and Wentworth, 1833), 466-470. For more on asylum development, see: Jimenez, *Changing Faces of Madness*; Trent, Jr., *Inventing the Feeble Mind*; Rothman, *Discovery of the Asylum*.

those who were “not furiously mad” or otherwise oppositional to basic social norms. These latter individuals were detained simply because of their intellectual differences. Many resolves passed in the 1830s outlined procedures for committing people who were held in county houses of correction to the Lunatic Hospital. Some introduced penalties for those who made alternate arrangements for individuals who were set to enroll; others transferred patients who were “least susceptible of improvement by remaining at the hospital” back to their correction houses to reduce overcrowding.<sup>129</sup>

Increasingly over the decade, legislation also authorized the detention of “idiots and lunatics or insane persons *not furiously mad*.” An 1836 act, for example, mandated that town selectmen confine those “not furiously mad” in correction houses upon request from any town resident. Once committed, these individuals were to be governed, employed, and provided for “in such manner, as the county commissioners...judge best.” Additional acts further delimited the terms of these individuals’ internment and release “whenever the cause of confinement shall have ceased to exist.” Even in such cases, however, legislation specified that people “not furiously mad” would remain

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<sup>129</sup> “Resolve for Erecting a Lunatic Hospital,” March 10, 1830, *Resolves of the General Court of the Commonwealth of Massachusetts passed at the Several Sessions of the General Court Commencing May, 1828 and Ending January, 1831*, 296-297; “An Act Concerning the State Lunatic Hospital,” March 24, 1832; “An Act in Addition to an Act Concerning the State Lunatic Hospital,” January 12, 1833; and “An Act Concerning Commitments to the State Lunatic Hospital,” March 13, 1833, all in *Laws of the Commonwealth of Massachusetts Passed at the Several Sessions of the General Court Beginning May, 1831 and Ending March 1833*, Vol. XII, 466-470, 493-494, 629-630; “An Act Concerning the State Lunatic Hospital,” April 1, 1834, and “An Act in Addition to an Act Concerning the State Lunatic Hospital,” April 7, 1835, *Laws of the Commonwealth of Massachusetts Passed at the Several Sessions of the General Court Beginning January 1834 and Ending April 1836*, Vol. XIII (Boston: Dutton & Wentworth, 1836), 251-257, 481-484; “An Act Concerning Lunatics,” April 19, 1837, and “An Act relating to Commitments to the State Lunatic Hospital,” March 8, 1838, *Laws of the Commonwealth of Massachusetts Passed by the General Court in the Years 1837 and 1838*, Vol. XIV (Boston: Dutton & Wentworth, 1839), 259-261, 327.

“subject to the order and discretion of the said commissioners.” By the late 1830s, then, the category of disability in asylum and correction house legislation had expanded to include all people with perceived intellectual impairments regardless of their capacity for labor or social integration. Together with those judged to be “furiously mad,” they were now restrained and isolated from the general population.<sup>130</sup>

Confinement in correction houses and the state Lunatic Hospital was just one of the many restrictions placed on people deemed to be cognitively impaired after the Revolution. In addition, adult men under guardianship due to perceived intellectual incapacity became ineligible to vote. In 1820, Massachusetts convened a state Constitutional Convention and delegates proposed fourteen amendments, nine of which were eventually ratified by voters. One amendment replaced property qualifications for voting with other stipulations, including freedom from guardianship. In the state constitution of 1780, all men over twenty-one who had resided in the Commonwealth for more than a year and held an estate with an annual income of three pounds or a value of sixty pounds were eligible to vote. The 1821 amendment, however, removed this property clause and instead restricted suffrage to “every male citizen, of twenty one years of age and upwards, (excepting paupers and persons under guardianship) who shall have resided within the Commonwealth one year.” Thus, prior to this amendment, propertied men

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<sup>130</sup> “An Act to Provide for the Confinement of Idiots and Insane Persons,” April 13, 1836, *Laws of the Commonwealth of Massachusetts Passed at the Several Sessions of the General Court Beginning January 1834 and Ending April 1836*, Vol. XIII (Boston: Dutton & Wentworth, 1836), 251-257, 481-484, 917-918; “An Act in Addition to an Act to Provide for the Confinement of Idiots and Insane Persons,” April 6, 1838, *Laws of the Commonwealth of Massachusetts Passed by the General Court in the Years 1837 and 1838*, Vol. XIV (Boston: Dutton & Wentworth, 1839), 358-359.

who were determined to be *non compos mentis* and under guardianship might have voted in state elections. Now they, along with poor men who relied on town and state aid, were disqualified.<sup>131</sup>

The disenfranchisement of people under guardianship was approved by Massachusetts delegates with little discussion or controversy. On December 9, Colonel William Beach of Gloucester, speaking out of turn at the Constitutional Convention, moved to insert “and those under guardianship” after “paupers” in the then proposed sixth amendment. As delegates debated the amendment in the coming days, only a few commented on Beach’s insertion. Honorable Elihu Hoyt of Deerfield noted that many people under guardianship paid taxes and thus “ought to have a right to vote.” He described a situation in which a man placed under guardianship for intemperance “becomes temperate, but yet requires a rod be held over him to keep him from relapsing.” As Hoyt explained, this man should be both eligible to vote

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<sup>131</sup> “An Act in Further Addition to an Act, Intitled an Act for the Relief of Idiots and Distracted Persons,” 1737, *The Charters and General Laws of the Colony and Province of Massachusetts Bay* (Boston: T. B. Wait and Co., 1814), 515-517; Jimenez, *Changing Faces of Madness*, 58-59; Guardianship Document of Daine (?) Osborn, Province of Massachusetts Bay, December 31, 1760 (Boston, 1760); Constitution of the Commonwealth of Massachusetts, Adopted March 2, 1780, online at: <https://malegislature.gov/Laws/Constitution>; *Amendments of the Constitution of Massachusetts, Proposed by the Convention of Delegates* (Boston: Russell and Gardner, 1821), 12-13. Maine disenfranchised people under guardianship two years prior in 1819; see: L. D. Carver, ed., *Constitution of the State of Maine, Formed in Portland, October Twenty-Ninth and Adopted by the People in Town Meetings on the Sixth Day of December, A. D. 1819* (Augusta: Kennebec Journal Print, 1902), 40. For more on the disenfranchisement of people with intellectual impairments, see: Kay Schriner, “Constructing the Democratic Citizen: Idiocy and Insanity in American Suffrage Law,” in Anne L. Schneider and Helen M. Ingram, eds., *Deserving and Entitled: Social Constructions and Public Policy* (Albany: State University of New York, 2005), 63-81; Kay Schriner, “The Competence Line in American Suffrage Law: A Political Analysis,” *Disability Studies Quarterly* 22, 2 (Spring 2002), 61-73; Kay Schriner and Lisa A. Ochs, “Creating the Disabled Citizen: How Massachusetts Disenfranchised People under Guardianship,” *Ohio State Law Journal*, 62 (2001), 481-533; Rabia Belt, “Disabling Democracy in America: Disability, Citizenship, Suffrage, and the Law, 1830-1920” (Ph.D. Dissertation, University of Michigan, Ann Arbor, 2015).

because he was temperate and under guardianship to prevent his intemperance in the future.<sup>132</sup>

Josiah Quincy of Boston also acknowledged the disenfranchisement of people under guardianship but dismissed it as a concern because it applied to so few. “Undoubtedly [the amendment] excludes some of a different character of mind,” he remarked, “but this number is very few; and from the small amount of property required, is, in individual cases, soon compensated.” Most delegates, in comparison, did not address the new guardianship clause, instead focusing on the elimination of property requirements and the continued exemption of paupers. This lack of controversy suggests either near unanimous agreement about the disenfranchisement of people under guardianship or that delegates understood the issue as part of the larger exclusion of voters without economic qualifications. As guardians assumed the property, earnings, and financial obligations of those in their custody, perhaps delegates simply supposed that they obtained their right to vote as well.<sup>133</sup>

In subsequent decades, other states adopted provisions to disenfranchise people believed to be intellectually impaired. In fact, many expanded upon Massachusetts’ regulations and exempted not only those under guardianship, but all individuals determined to be “idiots” and “lunatics” as well. Thus, the legal category of cognitive disability again broadened to

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<sup>132</sup> *Journal of the Debates and Proceedings in the Convention of Delegates, Chosen to Revise the Constitution of Massachusetts, Begun and Holden at Boston, November 15, 1820 and continued by Adjournment to January 9, 1821* (Boston: Office of the Daily Advertiser, 1821), 115.

<sup>133</sup> Ibid, 250, 123; Schriner and Ochs, “Creating the Disabled Citizen,” 518-527.

include all people with perceived intellectual impairments. At the Virginia and Delaware state constitutional conventions in 1830 and 1831, delegates explicitly disqualified voters who were “of unsound mind,” “idiot, or insane.” Between 1840 and 1860, ten more states—from Rhode Island to California—authorized similar measures. Like Massachusetts, these strictures were generally approved by delegates and voters with little debate or controversy. As James Monroe, Chair of the Virginia Convention, remarked during a discussion about suffrage:

We all agree to exclude the other sex—We all concur in excluding infants, those under military bondage in actual service—those rendered infamous by their crimes, and those of unsound mind. Who then are they whom we all agree to be fit and capable depositaries of power? They are males of twenty-one years of age and upwards—of sound mind, not infamous, not subject to another man’s will—that is, freemen.

By the mid-nineteenth century, the exclusion of people assessed as cognitively disabled was a central feature of voting regulations across the country.<sup>134</sup>

Massachusetts also moved to prevent intellectually impaired people from marrying. During the colonial period, English law precluded “idiots” and “lunatics” from marrying, but such restrictions were not imposed in America. In

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<sup>134</sup> *Proceedings and Debates of the Virginia State Convention of 1829-30, to which are subjoined the New Constitution of Virginia and the Votes of the People* (Richmond: Samuel Shepherd & Co., 1830), 422, 900; *Debates of the Delaware Convention, for Revising the Constitution of the State, or Adopting a New One, Held at Dover, November, 1831* (Wilmington: Samuel Harker, 1831); 42, 252. Also see: Schriner and Ochs, “Creating the Disabled Citizen.”

the early nineteenth century, however, the Massachusetts Supreme Court and legislature began to enforce and strengthen these earlier regulations. As noted previously, in 1815, the state Supreme Court invalidated the marriage of Ebenezer Winslow and Susannah Thomas because Winslow was *non compos mentis* and under guardianship at the time of the ceremony.

According to Chief Justice Parker's report, many witnesses offered "evidence touching the state of mind of the said *Ebenezer* at and about the time of said marriage," with most claiming that he was not "a lunatic but considered *non compos* for defect of understanding." Ultimately, the jury found that Winslow did not have "sufficient understanding to be able to make a valid contract respecting property," a decision that Parker and the Court sanctioned. "It would be hard that the issue of such marriages should be deemed bastards," Parker declared, but "no authority has been cited to show that such a marriage is valid to any intent or purpose whatever." Nine years later, the Massachusetts General Court further entrenched this restriction and extended it to all individuals determined to be "idiots" or "insane," not just those under guardianship. "Whenever it shall be made to appear to the Supreme Judicial Court, upon the complaint of either of the parties to a marriage contract, that the same is void by reason of...idiocy or insanity," the act stipulated, "the said court shall have power to declare the same void and to decree a divorce for such case from the bond of matrimony."<sup>135</sup>

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<sup>135</sup> "The Inhabitants of Middleborough versus The Inhabitants of Rochester," July 1815, in Tyng, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts*, Vol. XVII, 363-364; "An Act in Addition to an Act Entitled 'An Act for Regulating Marriage and Divorce,'" February 7, 1824, *Laws of the Commonwealth of Massachusetts, Passed by the General Court, at their Session which Commenced on Wednesday the Seventh of January and Ended on Saturday the Twenty-first of February One Thousand Eight Hundred and Twenty Four* (Boston: True and Greene, 1824), 292-293. Also

The ability of people deemed to be cognitively incapable to obtain legal settlement was questioned and revoked as well. During the colonial period, selectmen often prevented poor people with apparent cognitive ailments from settling in their towns out of fear that they would become reliant on town poor relief. Those who could prove their financial stability, however, rarely experienced scrutiny and exclusion. In the early nineteenth century, selectmen and judges prohibited those found to be intellectually impaired from settling regardless of their economic situation. In 1818, for example, the Massachusetts Supreme Court resolved that Israel Hill—a pauper who was “considered odd and strange, but always harmless” and “had earned his living by letting himself out to farmers in the vicinity, making his own bargains, and being considered honest and industrious”—could not gain legal residency in Northbridge. Chief Justice Parker’s report stated that although “there was much evidence offered to the jury tending to prove the capacity or incapacity of the pauper,” the jury and Court ultimately decided that “the pauper was not capable of any act by which he could gain a settlement for himself; and therefore, like a slave in former times, or a wife, or minor children, his settlement changed with that of his father,” who had since moved to Upton.<sup>136</sup>

Seven years later, in 1823, the Massachusetts Supreme Court again considered the settlement rights of cognitively-impaired people, at which point the revocation of their legal standing went unquestioned. *The Inhabitants of*

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see: Ezra Hasson, “Capacity to Marry: Law, Medicine, and Conceptions of Insanity,” *Social History of Medicine* 23, 1 (2010), 1-20.

<sup>136</sup> “The Inhabitants of Upton versus The Inhabitants of Northbridge,” September 1818, Dudley Atkins Tyng, Esq., ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts*, Vol. XV (Boston: Charles C. Little and James Brown, 1851), 237-239.

*Buckland v. The Inhabitants of Charlemont* hinged on whether the town of Buckland or Charlemont had fiscal responsibility for Miriam Pierce, a pauper determined to be “in a state of mental derangement.” The debate centered on whether Pierce had become insane before she came of age (twenty-one) in Charlemont or after she moved to Buckland with her father. If her insanity had developed while in Charlemont, her settlement would have followed that of her father because, as lawyers, witnesses, and justices all concurred, a cognitively-impaired person could not establish their own legal residency. If Pierce’s insanity had arisen more recently, however, members of the court agreed that her settlement would have remained in Charlemont and thus that that town should pay for her maintenance. Throughout the proceedings, no lawyer, witness, and judge ever supposed that Pierce might have obtained her own legal residency while experiencing insanity. By this point, it seems, such individuals’ inability to legally settle was simply assumed.<sup>137</sup>

In 1837, Massachusetts strengthened residency restrictions even further. As early as 1701, the Commonwealth had denied legal settlement to “impotent, lame, or otherwise infirme” immigrants who could not produce a monetary surety that they would not soon collect poor relief. “An Act Relating to Alien Passengers,” passed in 1837, intensified these regulations, explicitly adding “lunatics” and “idiots” to the list of disallowed immigrants and establishing official procedures for inspecting and admitting passengers. Now, governmental officials were required to board all incoming vessels, “examine

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<sup>137</sup> “The Inhabitants of Buckland versus The Inhabitants of Charlemont,” September, 1825, in Octavius Pickering, ed. *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts, Vol. III* (Boston: Charles C. Little and James Brown, 1848), 172-176.

into the condition of said passengers," and prohibit the entry of "lunatic, idiot, maimed, aged, or infirm persons, incompetent in the opinion of the officer so examining, to maintain themselves." In addition, the act designed times and places that these examinations would occur and instructed captains to anchor in specified holding areas until their charges had been evaluated. Prior legislation had imposed penalties on captains who, "through negligence or design," allowed prohibited or uninspected passengers to debark, but the 1837 act increased these fines, which now ranged from fifty to two thousand dollars.<sup>138</sup>

With these intensifying strictures on immigration and settlement—along with confinement, suffrage, and marriage discussed previously—people who were deemed to be intellectually impaired experienced a dramatic decrease in their legal independence.<sup>139</sup> Significantly, these proscriptions increasingly applied not only to those whose afflictions precluded their labor but to all

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<sup>138</sup> "An Act Directing the Admission of Town Inhabitants," March 12, 1701, *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*, Vol. 1 (Boston: Wright & Potter, 1869), 451-453; "An Act Providing for the Support of the Poor," February 14, 1789, *Acts and Laws of the Commonwealth of Massachusetts, 1788-1789* (Boston: Adams & Nourse, 1894), 98-102; "An Act providing for the Relief and Support, Employment and Removal of the Poor, and for repealing all former Laws made for those Purposes," February 26, 1794, *The Laws of the Commonwealth of Massachusetts, Passed for the Year 1780 to the End of the Year 1800*, Vol. II (Boston, Manning & Loring, 1801), 619-630; "An Act Relating to Alien Passengers," April 20, 1837, *Laws of the Commonwealth of Massachusetts, Passed by the General Court in the Years 1837 and 1838*, Vol XIV (Boston: Dutton and Wentworth, 1839), 270-271. For more on immigration restrictions, especially in Massachusetts, see: Kunal M. Parker, "State, Citizenship, and Territory: The Legal Constitution of Immigrants in Antebellum Massachusetts," and Robert J. Steinfeld, "Subjectship, Citizenship, and the Long History of Immigration Regulation," both in *Law and History Review* 19, 3 (Fall 2001), 583-653; Marilyn C. Baseler, "*Asylum for Mankind*": *America 1607-1800* (Ithaca, NY: Cornell University Press, 1998).

<sup>139</sup> Additionally, in 1837, Massachusetts precluded people with cognitive impairments from serving in the militia. Such laws had existed during the colonial period, but they now explicitly mentioned "idiots" and "lunatics." "An Act Concerning the Militia," April 20, 1837, in Theron Metcalf and Luther S. Cushing, eds., *Supplements to the Revised Statutes; Laws of the Commonwealth of Massachusetts, Passed Subsequently to the Revised Statutes* (Boston: Dutton & Wentworth, 1844), 54.

individuals who showed signs of cognitive incapacity as well. If Benjamin Chase had been found to be a “lunatic” and “idiot” in need of a guardian when his case went before the Massachusetts Supreme Court in 1818, his future would surely have been dramatically and damagingly different.

### *Negotiation and Resistance*

Many people who were assessed as intellectually disabled resisted this categorization by appealing their cases in court. Although some took legal action to refute their detention in correction houses, most commonly, like Chase, they refuted their need for guardianship and sued to recover their ability to independently govern their legal, financial, and personal affairs. As discussed previously, guardianship appeals existed in the colonial period and were often granted, especially if individuals negotiated their cases to higher courts. This remained true in Early Republic. The capacity that people deemed to be cognitively disabled demonstrated when presenting their arguments convinced many judges not only to revoke their guardianship and designations as “idiots” and “lunatics,” but also to recognize the complexities of articulating and implementing disability-based restrictions more generally. Thus, despite or perhaps because of the intensifying strictures on cognitive disability in the Early Republic, judges showed reluctance to declare people legally insane and to place them under guardianship, even as they continued to enforce these policies for those they assigned to the category of disabled.

Successful guardianship appeals occurred throughout the Early Republic. In 1805, for example, Laughlin McDonald of Bucksport,

Massachusetts appealed twice to a judge of probate and then to the state Supreme Court that he was “*compos mentis*” and no longer in need of guardian Jotham Morton. The preceding year, county overseers of the poor had asked the Bucksport selectmen to “make inquisition” as to whether McDonald was “*non compos*” and “incapable of taking care of himself,” which they soon performed and confirmed before a judge of probate. A few months later, McDonald appealed to the judge that he had been “restored to the use of his reason” and should be released from Morton’s custody. When the judge dismissed McDonald’s appeal, he petitioned again, citing the reason for his claim as “that he is *compos mentis*.” The case progressed to the Supreme Court where McDonald’s lawyers stressed the impermanence and disappearance of his insanity—calling it “a mere temporary inability”—and Morton’s lawyers focused on McDonald’s incapacity, as a person under guardianship, to prosecute in his own right or even pay the fee to file an appeal. The Court ultimately found in McDonald’s favor and revoked his guardianship. As Judge Theodore Sedgwick explained, “the law contemplates that there may be a time when a person, in the situation of the appellant, may be restored to his property—that is, when he is restored to his reason.” Sedgwick continued, “I am of opinion that [McDonald] is competent.”<sup>140</sup>

The guardianship appeal of 78-year-old Nathan Darling of Middleborough, Massachusetts, heard by the state Supreme Court in 1811,

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<sup>140</sup> “Laughlin McDonald, Appellant, vs. Jotham Morton & al.,” June 1805, County of Hancock, in Ephraim Williams, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of the State of Massachusetts from September 1804 to June 1805, Both Inclusive* (Northampton: S. & E. Butler, 1805), 543-548. Also see: William L. Smith, *The Practice in Proceedings in the Probate Courts of Massachusetts, Sixth Edition* (Boston: Little, Brown, and Company, 1903).

was also successful. After being placed under the custody of Major Thomas Bennet by a probate judge, Darling protested with the declaration that “for a man of his years, he possessed good rational powers.” Before the Court, Darling explained his situation and justified his recent questionable actions. He stressed that he was of sound mind and that “until within a few years, he had been uncommonly careful of his property.” However, Darling asserted, he had recently been “under the influence” of his children, who were “profligate and intemperate,” and “had been induced to spend his property for their undue indulgence.” Darling reasoned that the selectmen had evaluated his sanity on this “alteration of his habit,” but insisted that such an assessment was false because he was capable of managing his affairs. Bennet’s counter argument did not warrant description in the court record and the justices ultimately resolved that there was “no sufficient foundation to place the appellant under guardianship as a person *non compos mentis*.” “Perhaps it would be proper to place guardians over the children,” their report stated, “who are causing their father to waste his estate in gratifying their vicious propensities.” At the very least, the justices declared, “it might yet be discreet and proper” to place Darling under guardianship as a spendthrift in order to preserve his estate and prevent his potential reliance on the town. Regardless, they concluded, the designation of *non compos mentis* and guardianship on these grounds was “certainly” not warranted.<sup>141</sup>

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<sup>141</sup> “Nathan Darling, Appellant, from a Decree of the Judge of Probate, *versus* Thomas Bennet,” October 1811, Plymouth County, in Dudley Atkins Tyng, Esq., ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts*, Vol. VIII (Boston: Little, Brown, and Company, 1864), 129-130.

After Chase successfully contested his guardianship in 1818 because he had not received prior notification of the selectmen's adjudication of his sanity, others who were determined to be cognitively disabled used this precedent to challenge their own custody and alleged "idiocy" and "lunacy." For instance, in 1826, Joseph Clark III recovered a judgment from Isaac Hathaway, who was then considered *non compos mentis* and under guardianship, in the Court of Common Pleas. The following year, Hathaway's guardian appealed this decision because, he argued, he had not been notified of or present at the lawsuit and Hathaway could not make legally binding actions by himself. When the case was heard by the Massachusetts Supreme Court shortly after, Hathaway used the opportunity to explain that he had not been notified of his guardianship proceedings in the first place.<sup>142</sup>

After reviewing Hathaway's guardianship documents, which originated in 1793 and included the appointment of numerous new custodians in place of those who had resigned or died, the Court confirmed his contention and removed him from custody. "As the records apparently are entire and no loss of any of the papers in the probate office is suggested," Justice Marcus Morton asserted, "we cannot, even after the lapse of more than thirty years, presume that any decree passed, or that any notice was given." As such, Hathaway's guardianship was "absolutely void" and he was responsible for remitting Clark the payment stipulated by the Court of Common Pleas. One

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<sup>142</sup> "Isaac Hathaway, in Error, versus Joseph Clark 3d," October 1827, Plymouth County, in Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts*, Vol. V (Boston: Charles C. Little and James Brown, 1838), 490-491; "Isaac Hathaway, by his Guardian, in Error, versus Joseph Clark 3d," October 1828, Plymouth County, in Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts*, Vol. VII (Boston: Hilliard, Gray, Little, and Wilkins, 1830), 145.

year later, Hathaway's former guardian attempted to reestablish his custody with the claim that "Hathaway was an idiot." The Supreme Court nevertheless rejected his appeal and Hathaway retained control of his legal and financial affairs until his death in 1846.<sup>143</sup>

In some cases, however, Chase's precedent was used against the wishes of cognitively-disabled people; instead, they went to great lengths to defend their guardianship and legal incapacity. In 1834, for example, Susan Conkey, a "distracted person" from Pelham, with support from her guardian Whipple Cook, sued Henry Kingman in the Court of Common Pleas to recover the proceeds from the lease of her dower. According to Conkey and Cook, Kingman had rented Conkey's land but never paid Cook according to the lease terms. Kingman, in response, explained that he had not paid because Chase's precedent made their guardianship arrangement invalid. When the judge sided with Kingman, released Conkey from guardianship, and proclaimed Cook ineligible to prosecute the suit, Conkey and Cook appealed to the Supreme Court.<sup>144</sup>

They supported their claims with their guardianship documents, which had been authorized by a probate judge, and their lease agreement with Kingman. Kingman, in turn, submitted evidence from the probate court showing that Conkey had not been notified of her guardianship proceedings. The Supreme Court justices primarily deliberated about whether Kingman,

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<sup>143</sup> Ibid.

<sup>144</sup> "Susan Conkey, by Whipple Cook, her Guardian, versus Henry Kingman," September 1834, Counties of Hampshire, Franklin, and Hampden, in Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts*, Vol. XXIV (Boston: Charles C. Little and James Brown, 1842), 115-122.

who had necessarily acknowledged Conkey's custody when he signed the lease, could later contest it to challenge the lease's validity. Although they ultimately determined that he could not deny Conkey's guardianship, they nevertheless found the case in his favor. The failure to provide advance notice was an "undoubtedly fatal defect" rendering "the whole [guardianship] proceeding unauthorized and void," Justice Morton declared. As such, Cook could neither prosecute the case on Conkey's behalf nor enforce the terms of the lease. "When the plaintiff sees fit, by herself or any authorized agent or guardian, to enforce that contract," Marcus noted, "the defendant will not be allowed to deny its validity." At present, however, Kingman was released from the lease terms and not obligated to pay Conkey.<sup>145</sup>

Guardianship was perhaps the most common issue raised by people deemed to be cognitively disabled in the Massachusetts courts; however, there are instances in which people sued to extradite themselves from confinement in houses of correction. In 1833, Isaac Bragg, a Petersham man described as having "bodily health and strength" but "small mental capacity," did just this. Before the Court of Common Pleas, Bragg explained that four years prior he, as a town pauper, had gone to board with and work for Austin Brooks, then overseer of the poor. Such an arrangement was common: overseers often received the wages of paupers they bound out as compensation for their services. When Brooks' term as overseer ended in 1832, Bragg recalled that he had "expressed a determination not to leave [Brooks] unless compelled to," a proposal that Brooks had accepted and

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<sup>145</sup> Ibid.

offered “wages for his services over and above all expenses of boarding, cloathing and nursing him.” As Brooks argued in court, “[Bragg] might be regarded as *non compos mentis*, but...he possessed good health and strength, and was capable of doing many kinds of work upon the farm, and of earning by his labor more than enough to support himself.” John Wilson, the new overseer of the poor and prosecutor of the case, however, rejected the men’s arrangement, claiming that he was now entitled to the proceeds of Bragg’s labor. The Supreme Court ultimately found in Bragg and Brooks’ favor. “Although of weak mind, small mental capacity, and regarded as *non compos mentis*,” Justice Morton held, Bragg “was willing to labor for the defendant and the defendant was willing to employ him.” “Can such a person be considered a pauper?” he continued. “We think not.”<sup>146</sup>

The willingness of cognitively-disabled people to use the courts to negotiate the mounting legal restrictions placed on their independence—and the capability they showed when presenting their arguments—compelled many judges to recognize the subjectivity and variability of the category of disability and to revoke it when they saw fit. As the lawsuits discussed previously suggest, in Massachusetts, guardianship and confinement could be and often were revoked when the person in question appealed their case to the Supreme Court, admittedly a small percentage and a challenging task.

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<sup>146</sup> “John Wilson *et. al.* versus Austin Brooks,” October 1833, County of Worcester, in Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts, Vol XIV* (Boston: Little, Brown and Company, 1863), 341-344. For more on the binding out of those “who are liable by any law to be sent to the house of correction,” see: “An Act providing for the Relief and Support, Employment and Removal of the Poor, and for repealing all former Laws made for those Purposes,” February 26, 1794, *The Laws of the Commonwealth of Massachusetts, Passed for the Year 1780 to the End of the Year 1800, Vol. II*, 622.

Thus, despite or perhaps because of the intensifying strictures on cognitively-disabled people, judges were generally careful and conservative in their determinations of insanity and enforcement of the relevant policies. This hesitation stemmed in part from their awareness of the challenges of distinguishing and implementing a category of disability, a sentiment that many expressed in their case reports. In fact, judges' reports often contain lengthy and thoughtful meditations on the varied manifestations, expressions, and gradations of disability and the complexities of utilizing it as a legal category. Like those dispensing invalid or educational pensions, then, judges recognized the challenges of articulating and employing disability as a legal and administrative category, even as they continued to impose the applicable restrictions on those they did deem to be cognitively disabled.

In particular, judges—like those who oversaw invalid pension claims—acknowledged that disability was best evaluated by degree but that these degrees were difficult to detect. For instance, in Chief Justice Parker's report on *The Inhabitants of Buckland v. The Inhabitants of Charlemont*, which concerned the settlement of “lunatic” pauper Miriam Pierce, he declared that “the fact to be ascertained was not whether there was absolute madness, but whether there was such a degree of mental derangement as to incapacitate the pauper from gaining a settlement for herself.” “The question seems...to be,” Parker continued, “whether different degrees of the same disease are attended with the same consequences.” In response to Parker’s statements, lawyers Allen and Maxwell emphasized the challenges of assessing disability in its varying gradations. “We have no scale to measure the degrees of insanity,” they asserted. “As soon as the principles of association in the

human mind are observed to be deranged, we can make no calculation upon its operations." Six years later, Massachusetts Justice Samuel Wilde made a similar remark. Reporting on *Moses H. Seaver v. Lester Phelps*, which concerned the validity of contracts by people deemed later to be insane, Wilde argued that "it is sometimes difficult to determine what constitutes insanity, and to distinguish between that and great weakness of understanding." "The boundary between them may be very narrow, and in fact often is," he added, "although the legal consequences of provisions attached to the one and the other respectively are widely different."<sup>147</sup>

Justices also often recognized that disability was impermanent and context-dependent, further complicating its legal utility. In 1815, for example, Parker noted the temporariness of disability in his adjudication of the validity of Isaac Stone's will, which was issued while Stone was under guardianship. "Evidence of insanity in 1808 would not show conclusively that he was insane in 1811," Parker explained. "If a lunatic should be restored to his reason, and become perfectly capable of devising his estate," Parker continued, "it would be a cruel and unnecessary addition to his misfortune, to deprive him of that right, and to set aside his will, because he happened to die before he could apply to the probate court for a reversal of the decree." Twelve years later, Justice Wilde acknowledged the significance of context to disability in his determination of whether Sarah and Silence Eliot, two "deaf and dumb" "*non*

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<sup>147</sup> "The Inhabitants of Buckland versus The Inhabitants of Charlemont," September, 1825, Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts*, Vol. III, 172-176; "Moses H. Seaver v. Lester Phelps," September 1831, Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts*, Vol. XI (Boston: Charles C. Little and James Brown, 1847), 304-307.

*compos mentis*" adults under guardianship, held legal settlement in Natick. As Wilde declared, "there are those, and not a few, who may be unable to manage their property and other concerns with good judgment and discretion, and may need guardians to protect them from imposition, and who nevertheless have sufficient understanding to choose their homes." With such recognition of disability's impermanence and situational dependence, Parker and Wilde exempted Seaver, Stone, and the Eliots from the restrictions regarding guardianship and settlement that would have otherwise applied to their cases. When Parker did enforce the designation of disability and the accompanying legal strictures in Pierce's case, he justified his decision as a matter of practicality. "It is true we cannot measure the degree exactly," he held, "but we can come near enough for practical purposes."<sup>148</sup>

In addition to the courts, people deemed to be cognitively disabled negotiated the restriction of their legal rights using physical resistance. Such opposition, particularly to incarceration and settlement, was common and often effective, a fact that the 1829 survey conducted by Bangs for the Massachusetts General Court made clear. In town selectmen's returns, many included reports of people whom they believed to be cognitively impaired but who had successfully and repeatedly resisted confinement. The Barnstable selectmen, for instance, noted that C. Allen, a 50-year-old man, had "several times been confined in the Almshouse and as often broken loose," while the

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<sup>148</sup> "Joseph Stone, Appellant, &c. v. Joseph Damon and Others," October 1815, Dudley Atkins Tyng, Esq., ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts, Vol. XII* (Boston: Little, Brown, and Company, 1865), 487-488; "Edward A. Holyoke v. Thomas Haskins et ux.," March, 1827, Octavius Pickering, ed. *Reports of Cases Argued and Determined in the Supreme Judicial Court of Massachusetts, Vol. V* (Boston: Little Brown and Company, 1866), 20-27.

Dartmouth selectmen discussed Henry Wady, a 40-year-old man “in indigent circumstances [with] no relatives able to maintain him,” who “having broken his chair & made his escape is the reason of his not being now confined.” In addition, selectmen regularly described individuals who had settled in their towns despite efforts to warn them out. The Dedham selectmen stated that many “lunatics” in their correction house were “supposed to belong” to neighboring towns or states but had resisted their return and remained for multiple years. Selectmen from larger cities, such as Salem and Boston, described similar situations with intellectually afflicted almshouse residents from neighboring states and abroad. Using the strength of their own bodies, then, people with perceived cognitive incapacities contested their intensifying constraints and protected their chosen lifestyles with violence, force, and determination.<sup>149</sup>

Such physical resistance also often led town selectmen, like judges, to acknowledge the variability of disability and to enforce restrictions regarding confinement and settlement more occasionally and situationally than the law prescribed. For one, many selectmen acknowledged that they simply could not detain all those they “considered unsafe at large.” The Richmond selectmen’s 1829 return, for instance, discussed the cases of John Cook and Jacob Reckreston, who were both “at times violent” and “entirely unsafe to go at large.” Although Cook had been restrained for years, Reckreston had resisted imprisonment and remained “At Large” though he “continues the same.” The Wilbraham selectmen also described Solomon Griswold, an 18-

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<sup>149</sup> “Returns of Lunatics Living in Towns, 1829-1830,” Massachusetts Office of the Secretary of State, Massachusetts State Archives.

year-old who was “generally” at large even though he was “outrageous in language, breaks windows, & threatens much mischief.” In addition, selectmen recognized in their returns that not all people with cognitive impairments required or benefited from confinement and thus that it could be unevenly imposed. The Tisbury selectmen, for example, noted that Polly Waldon could be sufficiently managed by being “boarded in a large family where there is a strict attention by watching.” The Sterling selectmen recorded the case of John Gary, who “for the last ten years ha[d] been fully deranged but [was] capable of doing a great deal of work by having a proper master.” And, the Peru selectmen reported a “very troublesome” youth who improved if “particular attention [was] paid him.” Thus, the physical resistance that people who were believed to be cognitive disabled used to negotiate their restrictions compelled many town selectmen, as it did judges, to acknowledge the variability of disability and the complexities associated with its use as a category of exclusion.<sup>150</sup>

Finally, cognitively-disabled people resisted the mounting strictures they experienced using print. Most commonly, individuals published appeals of their confinement in an effort to demonstrate their sanity and redeem their reputations. As early as 1770, Captain John MacPherson, a wealthy Philadelphian, printed a volume of his poems, letters, and accounts to prove his sanity and wrongful imprisonment. “Every thing I have wrote since the 10<sup>th</sup> of May, 1769, I now present to my fellowship countrymen,” MacPherson stated in the preface, “and flatter myself no marks of insanity will appear in

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<sup>150</sup> Ibid.

them." Over sixty years later, in 1833, Robert Fuller of Cambridge, Massachusetts published a similar treatise about his unjust detention at the McLean Insane Asylum. Fuller admitted in the work that his "intemperate and unguarded expressions" prior to asylum entry "might have appeared strange...to persons unacquainted with [his] business and objects." But, he claimed, "I do aver before high heaven that I have a distinct recollection of my conduct all that time—that at no period of my life was I more capable of doing business." Nine years later, Elizabeth Stone of Westford, Massachusetts published another exposé of wrongful imprisonment for religious enthusiasm. Acknowledging readers' potential skepticism, Stone declared, "you may be ready to throw it back upon me, saying it is derangement, I expect it." "But, christian reader," she pleaded, "it is you and you only that can understand a part of my language, speaking about my spiritual life." Print provided yet another venue for cognitively-disabled people to negotiate their intensifying restrictions, demonstrate their capacities, and demand that others recognize them as well.<sup>151</sup>

### *Medical Involvement and Entrenchment*

Like bureaucrats who adjudicated invalid and educational pensions, judges who enforced legal restrictions on cognitively-impaired people

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<sup>151</sup> John MacPherson, *MacPherson's Letters, &c* (Philadelphia: Printed for the Author, 1770), iii-iv. Also see: John MacPherson, *A History of the Life, Very Strange Adventures, and Works of Captain John Macpherson: Which will, in Many Parts, Appear like an Eastern Tale* (Philadelphia: Printed for the Author, 1789). Robert Fuller, *An Account of the Imprisonment and Sufferings of Robert Fuller, of Cambridge* (Boston: Printed for the Author, 1833), 9-10; Elizabeth T. Stone, *A Sketch of the Life of Elizabeth T. Stone, and of her Persecutions, with an Appendix of her Treatment and Sufferings while in the Charlestown McLean Asylum, where she was Confined under the Pretense of Insanity* (Printed for the Author, 1842), 40.

increasingly turned to physicians to determine who was disabled and deserving of these regulations and whose mental differences were not such as to warrant this treatment. With judges' awareness of the subjectivity and variability of disability, such expert medical opinion soon became paramount.

In the late eighteenth and very early nineteenth centuries, however, judges rarely consulted physicians and, when they did, they evaluated their advice with skepticism. Cases about the sanity of testators heard by the Massachusetts Supreme Court are revealing. Most often, judges affirmed the opinions of sanity of the subscribing witnesses to the will. In 1808, for example, the Court validated Abel Perry's will because the "witnesses were very positive that...the testator was of sound mind," even though the appellants claimed that Perry was "much broken and very forgetful about the time the will was made." In 1811, the Court first admitted evidence from physicians regarding such matters but imposed constraints. In *John Hathorn and Others vs. James King*, which concerned the capacity of testatrix Mary Norris, for example, justices reported that the "question [of sanity] had been heretofore confined to the subscribing witnesses, but it was urged [by the appellants] that the opinions of skillful physicians, who were present, were of more value, and ought to be received rather than those of the witnesses, who might possess no skill, and had but slender means of forming an opinion."

Although the defendants protested that doctors' opinions were irrelevant and further "would put [them] in the place of the jury," the Court ultimately let the physicians testify provided that they "state the circumstances or symptoms from which they draw their conclusions," not only their "opinion of the

soundness of her mind." From these "circumstances and symptoms" only, the judges held, should the jury find its verdict.<sup>152</sup>

The following year, in 1812, the Massachusetts Supreme Court again considered the testimonies of physicians and showed reluctance to accept their authority. One year prior, Obadiah Dickinson had sued David Barber for slander because Barber had remarked on multiple occasions that he had been "criminally intimate" with Dickinson's wife. Together with his guardian, Barber defended his actions by declaring that "before and at the several times of speaking the words, [he] was insane." Barber and his guardian then supported this claim with evidence from observers and two doctors, Medad Pomeroy and Charles Blake. The presiding judge, however, had not admitted the doctors' testimonies upon request from Dickinson, an action that Barber and his guardian appealed to the Supreme Court. Before the Court, Dickinson's lawyer stressed the illegitimacy of the doctors' statements, arguing that they "went only to their opinions of the state of the defendant's mind, without stating any facts as the ground of such opinions." "Such evidence would not probably have influenced the jury in any degree," the lawyer contended, "and if it could, it ought not have such an effect." In response, Barber's lawyers asserted that the physicians' opinions were "natural and legitimate" and justly admissible. Ultimately, the Court found in Dickinson's favor and confirmed the judge's initial exclusion of the doctors'

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<sup>152</sup> "Thomas Buckminster & Al., Appellants, *versus* Abel Perry," November 1808, County of Middlesex, Dudley Atkins Tyng, Esq., ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts*, Vol. IV (Boston: Little, Brown and Company, 1865), 593-594; "John Hathorn and Others, Appellants, *versus* James King, Executor," November 1811, County of Essex, Dudley Atkins Tyng, Esq., ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts*, Vol. VIII (Boston: Little, Brown and Company, 1864), 370-371.

accounts. Their report admonished the physicians not only for stating “no facts on which they ground their opinion,” but also for disregarding the “degree” of Barber’s insanity—whether “great and notorious,” “slight, or not uniform.” Without such “facts,” the Court held, their testimonies were unacceptable as evidence.<sup>153</sup>

The transition towards medical evaluation of the legal category of disability occurred gradually and haltingly over the early nineteenth century. One indication of change happened in the late 1820s when judges and lawyers began describing cognitive impairment as a “disease.” In 1825 in *The Inhabitants of Buckland v. The Inhabitants of Charlemont*, for example, lawyers Allen and Maxwell demonstrated that Pierce’s insanity had existed since childhood by likening it to smallpox. “Just as in smallpox [where] the breaking out fixes the character of the symptoms,” the lawyers stated, so too “the subsequent madness of the pauper showed decisively that the singularities in her conduct before she became of age were the commencement of her malady.” When issuing the Court’s verdict, Chief Justice Parker also used the smallpox metaphor, this time to suggest that Pierce’s insanity arose later. As Parker declared, although the diagnosis of smallpox confirmed its preceding symptoms, it did not show that “the disease was at that [earlier] time contagious.” Thus, he reasoned, “symptoms of alienation of mind” were not the same as complete “mental derangement.”<sup>154</sup>

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<sup>153</sup> “Obadiah Dickinson versus David Barber,” September 1812, County of Hampshire, Dudley Atkins Tyng, Esq., ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts*, Vol. VIX (Boston: Charles C. Little and James Brown, 1850), 224-227.

<sup>154</sup> “The Inhabitants of Buckland versus The Inhabitants of Charlemont,” September, 1825, Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial*

Three years later, Chief Justice Parker again described cognitive impairment as a disease when reporting on *Nathan Brooks et. al. vs. Emerson Barrett et. al.*, which concerned whether Humphrey Barrett's suicide revealed his insanity and thus his will's illegitimacy. According to Parker, the accounts of Barrett's behavior—for example, “that he was occasionally dejected, absent, and headless of persons and things about him”—together with the “mental disease which had appeared in various collateral branches of his family” made a “strong case” for his insanity. Justices’ use of medical terminology to describe cognitive incapacity signaled—and paved the way for—their reliance on doctors to identify and evaluate disability in the coming decades.<sup>155</sup>

By the early 1840s, physicians’ opinions had become crucial to the legal determination of cognitive disability. The case of *Commonwealth vs. Abner Rogers, Jr.* heard by the Massachusetts Supreme Court in 1844 provides a useful demonstration. Rogers had murdered Warden Charles Lincoln Jr. while a prisoner at the Charlestown State Prison the preceding year and now pleaded insanity in his defense. Like in earlier cases, Chief Justice Shaw’s report discussed the evaluation of cognitive disability by degree and used medical terms, such as “mental disease,” to describe Rogers’ impairment. As Shaw once proclaimed, “if then it is proved, to the satisfaction of the jury, that the mind of the accused was in a diseased and

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*Court of Massachusetts, Vol. III*, 172-176. Also see: Jimenez, *Changing Faces of Madness*, 79-82.

<sup>155</sup> “Nathan Brooks, Executer, &c. et. al. Appellants, &c. versus Emerson Barrett et. al. October, 1828, County of Middlesex, Octavius Pickering, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts*, Vol. VII (Boston: Hilliard, Gray, Little, and Wilkins, 1830), 94-100.

unsound state, the question will be, whether the disease existed to so high a degree, that for the time being it overwhelmed the reason, conscience, and judgment.”<sup>156</sup>

Unlike in previous cases, however, Shaw urged the jury to weigh physicians’ testimonies heavily. As he explained, doctors’ professional education and experience gave their opinions “great consideration and respect,” even more so than the average observer. “Some questions lie beyond the scope of the observation and experience of men in general,” Shaw claimed, “but are quite within the observation and experience of those whose peculiar pursuits and profession have brought that class of facts frequently and habitually under their consideration.” As such, Shaw held that the opinions of doctors—even those who had “not had the opportunity to examine the particular patient and observe the symptoms and indications of the disease, at the time of its supposed existence”—were superior to those without such professional training. With this directive, the jury sided with the physicians and superintendents of insane hospitals who overwhelmingly pronounced Rogers insane at the time of the crime. By this point, then, doctors had become influential expert evaluators of the legal category of cognitive disability.<sup>157</sup>

Physicians also helped to review and enforce the intensifying legal restrictions on cognitively-impaired people outside the courts. Perhaps most

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<sup>156</sup> “Commonwealth vs. Abner Rogers, Jr.,” March 1844, Counties of Suffolk and Nantucket, Theron Metcalf, ed., *Reports of Cases Argued and Determined in the Supreme Judicial Court, Vol. VII* (Boston: Charles C. Little and James Brown, 1851), 500-506.

<sup>157</sup> Ibid.

significantly, they came to oversee the confinement of people with perceived cognitive incapacities both at newly established insane asylums and county houses of correction. The Massachusetts “Act Concerning the State Lunatic Hospital,” passed in 1832, for example, provided that the Superintendent of the Hospital would “always be a physician, constantly resident at the hospital.” Together with the Assistant Physician and Hospital trustees, this Superintendent, the act stated, would oversee the admission, treatment, and terms of release of all patients. Additionally, doctors began to serve as consultants at county correction houses. Physicians had treated almshouse residents for physical ailments in the eighteenth and early nineteenth centuries, charging the town, colony, or state accordingly for their visits. In 1830s and early 1840s, however, doctors began to treat those at houses of correction for cognitive conditions. The “Return Concerning the Condition of Pauper Lunatics and Idiots,” which was conducted by the Massachusetts legislature in 1842 as a follow-up to the 1829 survey, reveals this increased medical presence. Not only did the survey ask selectmen to describe “lunatics” and “idiots” “duration of disease,” but it also queried whether these individuals had been interned at a hospital or received treatment from “a physician employed...for the purpose of curing their mental derangement.” The Beverly selectmen, for one, reported that a doctor was “constantly employed” to treat the cognitive deficiencies of the fifteen “lunatics” and “idiots” in their correction house. By the mid-nineteenth century, then, doctors

had become primary assessors of the bodies and capacities of cognitively-disabled people in legal and bureaucratic venues and beyond.<sup>158</sup>

Legislation proscribing cognitively-disabled people's rights to live independently, hold and will property, vote, settle in towns, immigrate, and marry—along with their relentless negotiation of these constraints—constructed and strengthened legal and governmental categories of disability rooted in restriction and exclusion. Although lawmakers initially attempted to limit the liberties of people whose impairments rendered them disruptive or threatening to the community or unable to labor for their own livelihood, they soon expanded the construct of disability to include all who showed signs of intellectual incapacity. Despite or perhaps because of the intensifying nature of these strictures, resistance from people who rejected their designation as disabled or who resented how the label was assessed and applied led judges, as well as town officials, to recognize the complexities and contingencies associated with the emerging classification. In many cases, they displayed reluctance to declare people disabled and to reduce their rights. Nevertheless, as physicians became recognized as experts on disability in the courts and beyond, people with perceived cognitive impairments found it more difficult to support alternative conceptions of their capacities. Thus, the legal category of

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<sup>158</sup> "An Act Concerning the State Lunatic Hospital," March 24, 1832, *Laws of the Commonwealth of Massachusetts Passed at the Several Sessions of the General Court Beginning May, 1831 and Ending March 1833, Vol. XII*, 466-470; Massachusetts Office of the Secretary of State, "Returns of Pauper Lunatics and Idiots in Towns, 1842-1843," Massachusetts State Archives.

intellectual disability became not only more restrictive and damaging, but also more permanent.

## Part II

### Disability as an Institutional and Cultural Category

## Chapter 5: Disability Benefits in Insurance and Mutual Aid Societies

In 1821, more than one hundred black women and widows in Philadelphia joined together and formed an association for their mutual relief during periods of disability. The Daughters of Africa, as they called their organization, issued monetary benefits to members they determined to be disabled and arranged funeral services for members who died. Like the government bureaucrats, school managers, and judges who oversaw invalid and educational pensions and disability-based exclusions, then, the women of the Daughters of Africa soon became involved in defining and regulating the terms of disability and determining which members qualified for relief. In some ways, the society women made familiar choices. They described disability as the inability to labor on account of impairment or illness, dispensing benefits to "members sick and unable to work." They also evaluated disability by degree, allotting larger sums to members with short-term ailments and smaller amounts to the elderly and chronically impaired.<sup>159</sup>

In other ways, however, the dealings of the Daughters of Africa association suggest radically different understandings of labor and disability and approaches to disability-based social welfare. Society women put morality and respectability at the center of decisions about disability compensation, prohibiting members from receiving benefits for afflictions arising from "immoral conduct," such as intoxication. The Daughters of Africa acknowledged and reimbursed members for familial hardships, distributing relief to those who lost children or first husbands. In addition, unlike the men

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<sup>159</sup> Daughters of Africa, "Constitution, &c.," 1831, "Minutes," 1822-1838, and "Order Book," 1821-1829, Historical Society of Pennsylvania, Philadelphia, PA.

who adjudicated invalid and educational pensions and guardianship and settlement proceedings, the society women never required members to receive doctors' evaluations, instead empowering society-appointed overseers and the membership at large to make final determinations concerning applicants' capacities.<sup>160</sup>

The Daughters of Africa was one of more than three hundred mutual aid associations in early national Philadelphia. This chapter turns to the burgeoning market for health and disability insurance in the city and beyond, focusing how society members—like bureaucrats, school managers, and judges—created, implemented, and negotiated categories of disability in benefit distribution. As compared to federal and state bodies, these private organizations could be both more and less expansive in their interpretations of disability and approaches to disability-based social welfare. Although most aligned with government officials, school directors, and judges in defining disability in terms of labor and degree, many associations adopted additional, more holistic metrics and policies. Some positioned morality, respectability, and familial circumstances as crucial components of beneficiaries' deservingness, weighing these factors when dispensing relief. Societies of women typically adopted even more comprehensive valuations of disability and labor and accounted for incapacities from household and reproductive work, as well as market-based remunerative work, when issuing benefits. Controversies about disability, degree, deservingness, and the discrepancies between market, domestic, and reproductive labor nevertheless ensued.

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<sup>160</sup> Ibid.

While organizations composed of white men followed the government's lead in hiring doctors to evaluate candidates for disability compensation, associations of women and blacks made different choices, instead preferring to handle such decisions internally.

Although many scholars have studied mutual aid societies, particularly in Philadelphia, few have approached them with attention to disability.<sup>161</sup> This chapter utilizes the constitutions, registers, and proceedings of nearly one hundred such organizations in the Mid-Atlantic. The records of three associations—the Daughters of Africa, the First Female Beneficial Society of Philadelphia, and the Pike Beneficial Society of the City of Philadelphia—are comprehensive and permit close analysis, the latter most especially. These sources are complemented by physicians' reports and the proceedings and judgments of court cases involving the societies. Ultimately, this material reveals how the burgeoning early nineteenth-century market economy provided an alternative space for the formation, regulation, and negotiation of categories of disability, which were often loosely based on impairment, labor, and degree but also boasted a host of new metrics for identification and evaluation.

### *Defining Disability in Society Constitutions*

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<sup>161</sup> Scholarship has instead tended to focus on the insights that mutual aid societies provide into early national political organization; cultural codes of morality and respectability; philanthropy; urban sociability; and community and institutional development, especially among free blacks. For exceptions that do discuss disability, see: James C. Riley, "Sickness in an Early Modern Workplace," *Continuity and Change* 2, 3 (1987), 363-385; Andrea A. Rusnock and Vivien E. Dietz, "Defining Women's Sickness and Work: Female Friendly Societies in England, 1780-1830," *Journal of Women's History* 24, 1 (Spring 2012), 60-85.

Mutual aid associations experienced unprecedented organization and growth in the Early Republic. Friendly societies and sick clubs had existed in Europe and America as early as the seventeenth century. James C. Riley, for example, has chronicled a sick fund established by members of an Antwerp printing house in 1653 that continued for over one hundred years. In the American colonies, ship captains in Boston also organized a “loving and friendly Society,” which provided annuities to members who experienced “any Misfortune, so as to be reduced on Shore by Old Age or Sickness,” in 1742. In the late eighteenth and early nineteenth centuries, beneficial organizations increased in number and participation in both Europe and America. Scholars have attributed this development to parallel increases in industrialization, urbanization, and wage labor. As Alan Kidd writes, friendly societies proliferated at the turn of the nineteenth century in England because of “declining levels of social security” caused by “the growth of industrial occupations [and] changes in the organization of work, especially the migration of labor associated with the rapid pace of urbanization.” Accordingly, Kidd finds the highest society membership rates in English industrialized cities. Mutual aid societies were also popular in American cities. By 1838, there were 343 such associations incorporated in Pennsylvania and, judging from lists that also included unregistered societies, this number was in fact much higher.<sup>162</sup>

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<sup>162</sup> Riley, “Sickness in an Early Modern Workplace,” 363-385; “Rules and Orders to be Observed by a *Loving and Friendly Society, Called the Fellowship Club*” (Boston: May 5, 1752); Alan J. Kidd, *State, Society, and the Poor in Nineteenth-Century England* (Hampshire and London: MacMillian Press, Ltd., 1999), 112; “List of the Charters of Incorporation,” *Journal of the Forty-Ninth House of Representatives of the Commonwealth of Pennsylvania, Commenced at Harrisburg, Tuesday, the Fourth of December, in the Year of our Lord One Thousand Eight Hundred and Thirty-Eight, Vol. II* (Harrisburg: Boas & Coplan, 1838-1839),

A report by the Pennsylvania Society for Promoting the Abolition of Slavery on “The Present State and Condition of the Free People of Color of the City of Philadelphia” in 1838 reveals the diversity of mutual aid organizations and their broad social appeal. The report calculated that there were one hundred beneficial societies organized by and for free blacks in the city, forty-three of which were organized by and for women. Their total membership was approximately 7,448. Some associations, such as the Benevolent Daughters, had been formed as early as 1796 and amassed over \$700 for the assistance of disabled members. At least seven, including the Daughters of Clayton Durham, had just been founded in the late 1830s. In some cases, organizations had membership rolls as high as 240; in other cases, they numbered just 25 members. Mutual aid societies were usually formed along occupational, religious, institutional, or ideological lines. The report, for instance, lists the African Porter’s Benevolent Society, the Benevolent Sons of Zion, the African Female Bond Benevolent Society of Bethel Church, and many groups dedicated to anti-slavery, such as the Female Granville Society. The large number and variety of beneficial societies for free black Philadelphians in 1838 begins to suggest the potential extent and diversity of these associations across the nation throughout the period.<sup>163</sup>

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392-435; “The Present State and Condition of the Free People of Color of the City of Philadelphia and Adjoining Districts, as Exhibited by the Report of a Committee of the Pennsylvania Society for Promoting the Abolition of Slavery, &c” (Philadelphia: Published by the Society, 1838), 24-28. For beneficial societies in early nineteenth-century France, see: Allan Mitchell, “The Function and Malfunction of Mutual Aid Societies of Nineteenth-Century France,” in Jonathan Barray and Colin Jones, eds., *Medicine and Charity Before the Welfare State* (London and New York: Routledge, 1991), 176-177.

<sup>163</sup> “The Present State and Condition of the Free People of Color of the City of Philadelphia and Adjoining Districts, as Exhibited by the Report of a Committee of the Pennsylvania Society for Promoting the Abolition of Slavery, &c.” 24-28.

Society members outlined their conceptions of disability and their systems of compensation in their organizational constitutions. These documents almost always began with preambles—essentially society mission statements—that emphasized the universality and inevitability of impairment and the importance of saving in anticipation of future bodily and financial hardship. Preambles acknowledged that ill health and its damaging fiscal consequences were expected and unavoidable. In 1801, for example, members of The Provident Society of New-York proclaimed that “the vicissitudes of life are such, that it may often happen, that those who are now in easy circumstances, may soon by the afflicting dispensation of Providence, be reduced to indigence and want.” In 1807, the Friendly Society of the Town of Haerlem similarly contended that they had formed their society because “no man however easy in his circumstances, can be certain that they will always continue so.” Societies composed of women and blacks also often stressed that physical and financial injury disproportionately affected their members, thus making association doubly important. In 1810, the African Marine Fund explained that they had organized their society “considering the calamities that mankind in general are liable to fall into, more especially the Africans and their descendants.” The Benevolent Daughters of Zion of the City of Richmond also stated that they had come together “having seen, oftentimes with sorrow, the distress and affliction which generally prevails among our sisters of color, and among our friends at large.”<sup>164</sup>

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<sup>164</sup> Provident Society of New-York, “Constitution” (New-York: James Oram, 1801), 3; The Friendly Society of the Town of Haerlem, “The Constitution” (New York, 1807), 3; African Marine Fund for the Relief of the Distressed Orphans, and Poor Members of this Fund, “Constitution” (New-York: John C. Totten, 1810), 3; Benevolent Daughters of Zion, of the city

After recognizing the prevalence and predictability of impairment and its financial challenges, preambles then emphasized that it was the responsibility of people to prepare for these difficulties by saving money, both individually and collectively. Members of the Benevolent Society of the City of New-York declared in their constitution in 1804 that it was “a duty incumbent upon every one, in times of prosperity to make some provision against the period of approaching want.” The Ancient Britons Benefit Society of the City of New-York conveyed a similar message in a poem that prefaced their constitution: “While Summer Lasts the frugal Ant / Provides against approaching Want; / And in her Cell enjoys her Store, / Where Winter—Storms and Tempests roar.” Constitution preambles generally concluded by asserting that forming associations was the best means for preventing personal and financial distress. As such, they held that members in good standing could claim disability benefits as their right, not as a form of charity. “Whenever a member becomes disabled,” the Female Union Beneficial Society of Philadelphia professed in 1820, “she may provisionally demand as her right, and it shall be given as such, the sum agreed on in these articles as her allowance.” Recognizing the inevitability of bodily incapacity, whether age or injury related, members of mutual aid societies committed themselves to assisting members through monetary compensation.<sup>165</sup>

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of Richmond, “Constitution, Preamble, and Rules” (Richmond, VA, 1835) The Huntington, San Marino, CA.

<sup>165</sup> The Benevolent Society of the City of New-York, “The Constitution” (New-York: Low’s Press, 1804), 3; Ancient Britons Benefit Society of the City of New-York, “Constitution” (New-York: Low’s Press, 1805), 1; Female Union Beneficial Society of Philadelphia, “Constitution and By-Laws” (Philadelphia: P.M. Lafourcade, 1820), 3.

Although society constitutions began with sweeping statements about the universality of impairment and the merits of mutual association, they proceeded to provide precise definitions of ablebodiedness and disability in order to regulate the admission and compensation of members. Nearly all societies mandated that new members be ablebodied, which they distinguished in terms of age and health. Some organizations required prospective members to fall into particular age groups; the Abyssinian Benevolent Daughters of the Esther Association of the City of New York, for example, excluded new applicants “under the age of 16 or over 50.” Other societies adopted age-based pricing schemes. The Jackson Beneficial Society of Pennsylvania asked applicants between 21 and 25 to pay four dollars for admission, those between 25 and 30 to pay five dollars, those between 30 and 35 to pay six dollars, and so on.<sup>166</sup>

In addition, many societies demanded that incoming members demonstrate physical health visually and verbally. The Lancaster Beneficial Association asked candidates to “solemnly declare” that they were “perfectly free from any bodily complaint or infirmity whatsoever,” while the Howard Beneficial Institution of Philadelphia formed committees to visit prospective members in their homes, assess their health and capacities, and report their eligibility to the society. Impairments that members experienced before joining were usually exempt from later compensation. In 1836, for instance, the First Female Beneficial Society of Philadelphia refused to issue benefits to Mary

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<sup>166</sup> Abyssinian Benevolent Daughters of the Esther Association of the City of New York, “Constitution and By-Laws” (New York: Office of the Colored American), 3; Jackson Beneficial Society of Pennsylvania, “Constitution and By-Laws” (Philadelphia: Anderson & Meehan, 1816), 12.

Nickson because they found that she was troubled by “an old complaint which she had before she joined this society.” To manage the costs of disability relief, then, societies limited new membership to the ablebodied, which they defined as the young and healthy.<sup>167</sup>

While ablebodiedness was understood in terms of age and health, societies primarily defined the category of disability as the inability to labor. The meaning of labor, however, varied considerably between societies, especially according to gender. Associations of men generally specified that members should be unable to perform market-based, remunerative labor. The Benevolent Society of the City of New-York, for example, decreed that they would support any member who “shall by affliction be unable to follow his lawful and ordinary employment,” while the New York African Society for Mutual Relief declared a member qualified for relief when “affliction should render him incapable of pursuing his occupation, or gaining a livelihood.”<sup>168</sup>

Women’s organizations, in contrast, compensated members with incapacities from household and reproductive labor as well. Many issued higher benefits to those who were precluded from both market and domestic labor and smaller amounts to those who could not conduct remunerative labor only. The Abyssinian Benevolent Daughters of Esther Association of the City of New York, for instance, gave two dollars a week to “any member who shall

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<sup>167</sup> Lancaster Beneficial Association, “Constitution and By-Laws” (Lancaster, PA: J. Bear, 1818), 19; Howard Beneficial Institution of Philadelphia, “Constitution and By-Laws” (Philadelphia: Joseph Rakestraw, 1832), 6-7; Minutes of the First Female Beneficial Society of Philadelphia, 1814-1840, Historical Society of Pennsylvania, September 29 and October 6, 1836.

<sup>168</sup> The Benevolent Society of the City of New-York, “The Constitution,” 8; New-York African Society for Mutual Relief, “The Constitution” (New-York: Printed for the Society, 1808), 7.

be taken sick, so as to be confined to her bed" and one dollar a week to members "not confined to her bed, but prevented from her daily occupation." In addition, women's societies compensated members who incurred disabilities from reproductive labor. Although standard, short-term incapacities on account of pregnancy and childbirth were generally disqualified from relief, members were typically awarded benefits when their ailments from such experiences continued for more than a month. As the Female Union Beneficial Society of Philadelphia stated in their constitution, "neither shall any member be allowed benefit during the sickness brought on by parturition, except in case of relapse after four weeks, then she shall be allowed the same benefit as if she were confined by other sickness."<sup>169</sup>

Women's mutual aid societies often further delineated the category of disability by stipulating the activities that members receiving compensation could and could not perform. The Female Union Beneficial Society of Philadelphia, for example, specified that members on relief could "walk out by permission from the stewards for the purpose of gathering strength" without compromising their eligibility for benefits. Although movement outside the home might be construed as ablebodiedness, society members confirmed that such actions were permissible as long as the member received the stewards' consent. Women's friendly societies in England were even more explicit about acceptable behavior for beneficiaries. Some associations

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<sup>169</sup> Abyssinian Benevolent Daughters of the Esther Association of the City of New York, "Constitution and By-Laws," 7; Female Union Beneficial Society of Philadelphia, "Constitution and By-Laws," 8. For more on labor and disability in women's mutual aid societies in England, see: Rusnock and Dietz, "Defining Women's Sickness and Work: Female Friendly Societies in England, 1780-1830," 60-85.

outlawed anything that could be understood as labor while collecting benefits. The society held at the house of William Olieff, for example, expelled members on relief who were found “working at her trade or calling, or doing any business whatever, mending, making, cleaning, or any household work in her family.” Other organizations made exceptions for specific tasks. The Aldgate society allowed beneficiaries to “sweep the house or cook for their husbands” but not to wash, iron, or do “anything by which money is earned,” while the Fradley Society of Staffordshire permitted disabled members to cook “necessary Food for herself and one Child.” Cooking for husbands or additional children was apparently prohibited. Conceptualizing labor more broadly than men’s societies, then, women’s associations both accounted for the dangers of domestic and reproductive work in their valuations of capacity and increased their surveillance of beneficiaries, demarcating activities that counted as labor from those that did not.<sup>170</sup>

Societies of both men and women also factored members’ familial situations into their assessments of disability, although women’s organizations tended to extend those with familial incapacities greater support. Men’s societies usually issued onetime funeral allowances to members who lost their wives and regular allotments to deceased members’ widows and children.

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<sup>170</sup> Female Union Beneficial Society of Philadelphia, “Constitution and By-Laws,” 12; Bridgeton Female Beneficial Society, “The Constitution and By-Laws” (Bridgeton, NJ: Samuel S. Sibley, 1830), 6; “Rules and Orders to be Observed by A Friendly Society of Women, United for the Mutual Support and Benefit of each other when under real Afflictions: Now held at the HOUSE of Mr. William Olieff, The Blakeney Head, Norton Falgate” (London: Axtell and Purdon, 1785), 7; London, Public Record Office, Friendly Society papers, FS/1/406A/78, quoted in Anna Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (Berkeley and Los Angeles, CA: University of California Press, 1995), 37; Rules of the Fradley Female Friendly Society (1789/1817), Stafford County Record Office Q/RSF/3/41, quoted in Rusnock and Dietz, “Defining Women’s Sickness and Work: Female Friendly Societies in England, 1780-1830,” 72.

Women's societies, in comparison, dispensed funeral benefits more liberally. The Daughters of Africa supported members who lost children and first husbands (the collection of benefits for the death of a second husband was prohibited), while the Benevolent Daughters of Zion of the City of Richmond compensated members who lost one or both of their parents. In addition, women's organizations provided benefits to members for the disabilities of their husbands. The Abyssinian Benevolent Daughters of Esther Association of the City of New York, which gave two dollars a week to members who were disabled from market and household labor and one dollar a week to members disabled from remunerative labor only, issued women whose husbands were "sick, confined to his bed" weekly sums of six shillings. As society members determined, the impairments and deaths of family members affected the laboring ability and financial stability of their members almost as much as if they had experienced these events directly. Women's associations especially thus distributed compensation with these circumstances in mind.<sup>171</sup>

In addition, men's and women's societies assessed the disabilities of their members according to their perceived morality. Nearly all associations required prospective members to prove their honorable and upstanding characters as prerequisites for admission. In some organizations, such as the Dallas Beneficial Society, applicants submitted letters of recommendation; in others, such as the Bridgeton Female Beneficial Society, candidates were

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<sup>171</sup> Daughters of Africa, "Constitution, &c.," 6, 16; Benevolent Daughters of Zion, of the city of Richmond, "Constitution, Preamble, and Rules," 5; Abyssinian Benevolent Daughters of the Esther Association of the City of New York, "Constitution and By-Laws," 7; "Rules and Orders to be Observed by a Friendly Society of Women...Now Held at the House of Samuel Warren" (London: Henry Fry, 1795), 19.

required to be nominated by one or more existing members. Most associations also restricted disability compensation to those who proved that their afflictions were not the result of any immoral conduct. As the Rope-Makers Benevolent Society of Brooklyn explained in their constitution, “as the funds of this society are only meant for the relief of members in real want, it is hereby specially provided that if any members shall be found to have brought trouble upon themselves by drunkenness, riotous, or irregular practices of any kind, they shall not be entitled to receive assistance from the society during such indisposition.” Societies of both men and women most heavily regulated disabilities believed to stem from intemperance and sexual misconduct. In 1823, for instance, the Pike Beneficial Society of Philadelphia excluded both George Magrath and John R. Morris from benefits because they had “Suspicions that his Sickness originated from using Liquor to Excess” and because his “Disease was of the Venerial kind” respectively. That same year, the Daughters of Africa fined at least twelve members, some of them beneficiaries, for drinking, stealing, and other behavior “Disordered and improper in the Extreme.”<sup>172</sup>

A final metric for determining disability in both men’s and women’s societies was degree of incapacity. Unlike the government bureaucrats and judges in preceding chapters, the most common standard that society members used to assess degree of disability was duration. Most

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<sup>172</sup> Dallas Beneficial Society, “Constitutions and By-Laws,” 16; Bridgeton Female Beneficial Society, “The Constitution and By-Laws,” 4; Rope-Makers’ Benevolent Society of Brooklyn, “Rules and Regulations,” New-York Historical Society, NY, 5; Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843, Historical Society of Pennsylvania, June 23, 1823 and July 1823.

organizations provided beneficiaries with certain allotments during the first few weeks of their disability and reduced amounts if their condition continued over time. The Brooklyn African Woolman Benevolent Society, for example, gave members no compensation for the first eight days. They then extended “two dollars per week for four weeks,” “one dollar and a half for the four ensuing weeks,” and “for the four ensuing weeks...one dollar per week.” Less often societies evaluated the degree of their support according to the type of impairment. The Pike Beneficial Society of Philadelphia, for example, gave “diseased” beneficiaries six dollars each week and those “disabled by old age, bodily infirmity, or casualty” weekly allowances of two dollars. The America Beneficial Society, in comparison, issued compensation based on the physical or cognitive manifestation of incapacity. While physically-impaired members received six dollars a week, those deemed to be “*non compos mentis*” received just two dollars. Admittedly, these latter metrics may also have been rooted in duration, with members assuming that the situations of the elderly and cognitively impaired were long-lasting or even permanent. By defining and regulating the category of disability in terms of labor, familial situation, morality, and degree, mutual aid societies attempted to provide the appropriate compensation to the most deserving candidates and to protect the financial security of the organization as a whole.<sup>173</sup>

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<sup>173</sup> Brooklyn African Woolman Benevolent Society, “Constitution” (Brooklyn, NY: E. Worthington, 1820), 19-20; Pike Beneficial Society of the City of Philadelphia, “Constitution” (Philadelphia: I. Scott, 1815), 9; America Beneficial Society, “The Constitution and By-Laws” (Philadelphia: Printed by Order of the Society, 1820), 6.

### *Debating Disability and Deservingness*

Despite society members' efforts to clearly and comprehensively define disability and delineate the terms of compensation in their constitutions, conflicts between members who desired benefits and society-appointed overseers who served as benefit adjudicators inevitably arose.<sup>174</sup> One source of controversy was the difficulty in distinguishing household from marketplace labor in members' claims for compensation. This debate primarily arose in societies of men who, unlike women, had described disability less explicitly in their constitutions. An illustrative case is a conflict that occurred between the Pike Beneficial Society of Philadelphia and society member John Bryan, a house painter. In 1841, Bryan was collecting disability benefits from the society on account of a "Billious Remittant fever." When overseers William Hughes and John Ennis visited him in his home to provide him his weekly allotment, however, they found Bryan painting the latch of his front gate. Considering that he was a house painter by trade, the overseers concluded that Bryan was "at work while receiving the benefit of [the] Society" and thus they "could not extend his benefit any further until some order was taken on it." As the overseers saw it, painting the latch of his gate revealed Bryan's

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<sup>174</sup> It is important to note that members with impairments were on both sides of these debates, as applicants for benefits and as society-appointed overseers and general members whose incapacities had not precluded their organizational duties or attendance at meetings. However, members whose afflictions had compelled them to collect disability benefits would typically not have been involved in evaluating other applicants for relief. Society protocol usually required that they stay home from association meetings; in some cases, such as the Brown Fellowship Society, members receiving benefits were even explicitly prevented from voting on society matters. As soon as these members' conditions had resolved and they no longer collected compensation, however, they would have been back on the other side, assessing the disabilities of applicants and voting on related disputes. Brown Fellowship Society, "Rules and Regulations" (Charleston, SC: J. B. Nixon, 1844), 18.

capacity for market-based, remunerative labor and thus his culpability in feigning disability and improperly collecting compensation.<sup>175</sup>

Members debated Bryan's case at subsequent society meetings. In June, Hughes and Ennis reported the infraction and members concluded that Bryan was indeed "in violation of the 10<sup>th</sup> & 11<sup>th</sup> Articles of the Constitution," which precluded beneficiaries from "attending to [their] usual business." They ordered Bryan, who had not come to the meeting due to his indisposition, to appear at the next meeting and "show cause (if any he has) why he should not be expelled." Although Bryan failed to attend the next meeting on account of his continuing ailments, he sent a letter "denying the charge made against him" accompanied by two certificates. The first was from Doctor William Sewell, who testified that Bryan was in fact "suffering under severe debility." The second was from fellow society member William Anderson who proclaimed Bryan "not guilty of the charge made against him." After extensive discussion, society members ultimately voted for Bryan's dismissal. As society president James Durnell declared, Bryan was "guilty of painting his gate or a part of it as charged against him by the Overseers," his actions counted as "employ[ment] while deriving the benefits" of the society, and thus his membership should be terminated.<sup>176</sup>

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<sup>175</sup> Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843, June 28 and July 26, 1841.

<sup>176</sup> Ibid; "Commonwealth ex. Rel. Bryan *against* The Pike Beneficial Society" in Frederick Watts and Henry J. Sergeant, eds., *Reports of Cases Adjudged in the Supreme Court of Pennsylvania, Vol. VIII*, 248. Also see: Pike Beneficial Society of the City of Philadelphia, "Constitution" (Philadelphia, Printed for the Society, I. Scott, Printer, 1815), 12.

One month later, Bryan sued the Pike Beneficial Society of Philadelphia in the Court of Common Pleas for wrongful expulsion. Before the court, Bryan denied painting his gate, while Durnell defended the society by noting that members had voted for his removal “after hearing the proofs and thereon carefully deliberating” according to society regulations. Ultimately, the jury found in Bryan’s favor, jurors basing their reasoning on the distinction between household and marketplace labor. As presiding Alderman Anson Virgil Parsons explained in his report, when Bryan painted his gate—which he denied but which was “tolerably clear” from the evidence—he was providing for “the comfort of himself or family.” This labor, Parsons held, was different from that “whereby gain or advantage would be derived to himself or any ultimate profit would be received.” “Suppose a shoemaker was a beneficiary and he should simply sew up a rent in his boot,” Parsons reasoned, “or a glazier should put a pane of glass into the window of his house to protect himself and family from the cold.” “Can it with propriety be said that he had been laboring for himself for gain, following his own business for profit, or doing any act which brings him within the provision of that article?” “In my opinion it would not,” Parsons concluded. According to Parsons and the jury, then, disability could coexist with domestic labor that was not directly or immediately remunerated. Only work done expressly for “pecuniary benefit” revealed ablebodiedness. With this rationale, the Court ordered the Pike Beneficial Society of Philadelphia to restore Bryan’s membership and extend him the compensation they had withheld.<sup>177</sup>

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<sup>177</sup> “Commonwealth ex. Rel. Bryan *against* The Pike Beneficial Society” in Watts and Sergeant, eds., *Reports of Cases Adjudged in the Supreme Court of Pennsylvania*, Vol. VIII, 247-250. The controversy between Bryan and the Pike Beneficial Society of Philadelphia did

John Bryan was not the only Pike Beneficial Society of Philadelphia member who provoked debate about the difference between market and domestic labor and the consequences of each for disability relief. Just three months after Bryan was expelled, members debated whether the actions of beneficiary Godfrey Beckel, a toy store owner, revealed his capacity for remunerative labor. As overseers William Hubbard and George Buck reported, they had seen Beckel “attending and purchasing goods at C. C. Mackey and Doolittle’s Evening Auction sales” while he was receiving society relief. According to Hubbard and Buck, Beckel was as likely to have been at the auction purchasing goods for his business as for his household. Thus, his actions demonstrated both that he was able to work and liable for having defrauded the society by pretending disability in order to collect benefits. After hearing the overseers’ case, society members commissioned a five-member committee to investigate the situation. At the next society meeting, this committee issued a report—complete with testimonies from Mr. Doolittle’s clerk and numerous society members—that ultimately recommended Beckel’s dismissal. At this meeting, Beckel also came forward to testify. Providing a “full and detailed account of the whole transaction,” he requested “the sympathy of the society by granting him three weeks benefits.” Although some members spoke on Beckel’s behalf, the society ultimately deemed him “guilty of the charges proffered against him” and expelled. Unlike Bryan, Beckel did

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not, in fact, end with this hearing at the Court of Common Pleas. Two years later, the Pike Beneficial Society of Philadelphia appealed the judgment to the Supreme Court of Pennsylvania, where Alderman Parsons’ decision was overturned in favor of the Society. As Justice Thomas Sergeant and the Court determined, a private organization had complete power to preside over the admission and expulsion of members. Thus, the state could not intervene in their “regular course of proceedings.”

not press charges. Instead, he seems to have accepted the society's decision and his own dismissal.<sup>178</sup>

Because women's societies compensated disabilities from household and reproductive labor as well as market-based labor, they rarely debated the limits of marketplace employment. Instead, their negotiations centered on the character and deservingness of beneficiaries, a source of controversy in men's societies as well. Sexual propriety was a regular subject of dispute. Although society constitutions generally exempted members with impairments from perceived sexual misconduct from receiving compensation, debates arose about what these conditions were and how they would be assessed. For instance, in 1820, the First Female Beneficial Society of Philadelphia called a special meeting to consider the "the misconduct of two of our members (Viz) Margaret Auld and Mary King." While King submitted her resignation upon receiving notice of the charge, Auld appeared at the following society meeting to defend her respectability as a wife and mother. Presenting her marriage certificate, she proclaimed that "she was a married woman," "that her Husband had been at home within a year and that her child belonged to him." Despite her impassioned appeal, members remained convinced of her sexual immorality and demanded her resignation the following month.<sup>179</sup>

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<sup>178</sup> Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843, October 25 and November 22, 1841.

<sup>179</sup> Minutes of the First Female Beneficial Society of Philadelphia, 1814-1840, July 4, July 6, and September 28, 1820.

A similar dispute occurred three years later when Pike Beneficial Society of Philadelphia members received word that their former president, John R. Morris, was collecting compensation for an affliction “of the Venerial kind.” Morris defended his sexual propriety with a certificate from Doctor William Rush, who asserted that the “many obstinate Ulcers on his body [were] occasioned not in any manner by imprudence or excesses but by circumstance Entirely beyond his control.” Unsatisfied, society members required Morris to be examined by two additional physicians. When they disagreed with Rush and declared his condition venereal, Morris was forced to refund the benefits he had received.<sup>180</sup>

Like sexual misconduct, societies also precluded members from receiving compensation for impairments related to the consumption of alcohol, but the implementation of such provisions proved contentious. In 1833, for example, Pike Beneficial Society of Philadelphia overseer Samuel Adams asked the membership to suspend Joseph Key, a tanner by trade, for collecting relief when “nothing save the usual effects of Intemperance ailed him.” As Adams explained, he had visited Key to dispense his weekly allowance, inquired into his health and medical treatment, and then visited Key’s doctor to corroborate his answers. When the doctor “told me that he did not know such man as Joseph Key,” Adams declared, “the whole trick [was] too plain to be mistaken.” Society members responded to Adams’ allegations by withholding Key’s benefits and forming an investigatory committee. This committee then visited Key, who, as they later described, was “in bed and

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<sup>180</sup> Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843, June 23, July, August 25, September 22, October 27, 1823.

apparently in great pain from a blister on his side, so much as to be unable to turn in bed and scarcely to speak." After conversing with Key's wife and physicians, the committee concluded that Key's condition was "brought on by nothing else but neglect and exposure through Intemperate habits," and recommended his expulsion. Although Key appeared at the next society meeting to "vindicate himself from the charges," the membership confirmed his dismissal. Like Bryan, Key sued the society in the Court of Common Pleas for wrongful removal. Although he died before the case was brought before the court two months later, Alderman Geyer found in his favor and required the society to pay his family the benefits he deserved.<sup>181</sup>

Intemperance also generated controversy in women's societies, although members tended to discuss the subject more obliquely, citing beneficiaries simply for "immoral behavior." A conflict explicitly about intoxication occurred between members of the First Female Beneficial Society of Philadelphia in 1817. An anonymous society member reported to the association that Rebeckah B. Painter had been "drinking" while receiving benefits and thus was "guilty of immorality" and "breach of the constitution." When Painter appeared the following month to defend herself, the society meeting minutes suggest periods of intense dispute. At first, the society secretary recorded that Painter was "expelled by Ballot" but then modified the statement and marked the case "deferred for want of evidence." Towards the end of the meeting, the secretary noted discussion of Painter's case again. She wrote "Rebeckah B. Painter expeld for drinking," crossed it out and added

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<sup>181</sup> Minutes of the Pike Beneficial Society of Philadelphia, 1814-1823, October 28, November 7, November 25, and December 23, 1833, and November 25 and December 28, 1835.

“after which she was expelld for breach of constitution,” and finally crossed out the entire section. Perhaps Painter had successfully argued her case and resisted her dismissal.<sup>182</sup>

More commonly, women’s societies discussed beneficiaries’ transgressions in general terms. In 1823, for instance, Elizabeth Hemmons, an overseer for the Daughters of Africa, fined Hannah Morris, who had recently collected disability compensation, for “immorrell conduct.” Although the amount of the charge matched the penalty prescribed for a character violation, such as intoxication, Morris’ failure to appear at the next society meeting in her defense left the details of the case unrecorded. The Daughters of Africa order book, which was used to document members’ fines and benefits, also reveals instances in which beneficiaries returned their allowances to the society. Details of these cases are again slim, but some repayments may have been on account of moral and behavioral infractions that discounted their previous receipt of benefits. The character of beneficiaries was a crucial component of societies’ determinations of disability, but assessments of morality and respectability—and sexual misconduct and intemperance in particular—proved controversial, as society overseers and the membership at large worked to limit benefit distribution and disabled members advocated for their deservingness.<sup>183</sup>

Another source of controversy was the evaluation of beneficiaries’ degrees of disability. John Bryan also disagreed with Pike Beneficial Society

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<sup>182</sup> Minutes of the First Female Beneficial Society of Philadelphia, 1814-1840, January 2, 1817 and April 3, 1817.

<sup>183</sup> Daughters of Africa, “Minutes,” April 1, 1823, and “Order Book.”

of Philadelphia members on this topic, although in this case he prevailed without resorting to the courts. In 1840, one year before he argued with members about painting his gate, Bryan applied for and collected five dollars a week in recompense for a “disorder of the lungs.” After four months, however, overseers asked Bryan to submit a doctor’s certificate “explaining the nature of his disease and if there is any prospects for his ever recovering.” As the society’s constitution provided “diseased” beneficiaries five dollars a week and those “disabled by old age, bodily infirmity, or casualty” only two dollars a week, overseers likely supposed that Bryan’s enduring ailments fell into the latter category and deserved less support. As expected, after reviewing his doctors’ reports, overseers reduced Bryan’s weekly allotments to three dollars—somewhere between the “diseased” and “disabled” categories.<sup>184</sup>

Bryan responded in protest and, for the next four months, refused to accept any compensation from the society. As two overseers explained, “we visited John Bryan on various occasions and he still persists in not receiving three dollars per week as the Society by the resolution agreed to pay.” When Bryan finally consented to accept his benefits, he did so on his own terms. He demanded that the society “agree to not lower [his allowance] to two Dollars” and stipulated that overseers were no longer welcome in his home. “When he wants the money he will call on the Society for it,” an overseer reported. Members agreed to Bryan’s terms out of a desire to avoid future conflict, which, considering their ensuing lawsuit, was in vain. Controversies about

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<sup>184</sup> Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843, October 26 and November 23, 1840.

disability, labor, character, and degree dominated society meetings, negotiations, and interactions. As a result, towards midcentury, some members began to explore ways to lend greater clarity and authority to their conferred upon categories of disability.<sup>185</sup>

### *Regulation and Medicalization*

Throughout the Early Republic, nearly all mutual aid associations preferred to settle debates about disability compensation internally. Towards midcentury, however, an increasing number of societies, particularly those comprised of white men, hired physicians to assess members' incapacities, adjudicate controversies, and provide greater credibility and authority to their established categories of disability. Associations of women and blacks, in comparison, tended to retain their society-specific methods for distinguishing disability, resisting medical involvement.

Internal evaluation and resolution was always society members' first resort. Constitutions outlined procedures for investigating the controversy in question, weighing both sides, and determining an appropriate solution. As demonstrated by the disputes discussed previously, associations typically formed investigatory committees that consulted with the charged members and various witnesses and reported their findings at the next society meeting. At this meeting, other members also had the opportunity to voice their opinions, query witnesses, and defend their actions if necessary. The vast

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<sup>185</sup> Ibid, December 28, 1840, and January 25, February 22, March 22, 1841.

majority of societies made determinations by popular vote, although some, such as the Rope-Makers' Benevolent Society of Brooklyn, used committees of arbitration. In their case, a team of six members—three who were chosen by the society and three by the member being tried—evaluated the circumstances and issued a final judgment. Organizational constitutions stipulated that decisions about the expulsion of members were final. "If the charge brought against her be satisfactorily proved," the members of the Female Union Beneficial Society of Philadelphia declared, "she shall be expelled from this society, and all monies paid by her into the funds shall be forfeited."<sup>186</sup>

During the first two decades of the nineteenth century, beneficial societies rarely consulted doctors and, when they did, usually only in instances when overseers were unable to examine applicants for benefits. Most commonly, associations asked members to submit certificates from physicians when they lived at a distance from the society's place of meeting and overseers were unable to travel to their homes. In 1800, for example, the Social Society of Schenectady ordered members residing outside the city to send "affidavits of two respectable persons, (his attending physician being one of them)" to receive compensation. Even in such cases, doctors were usually only one of many authorities whose documentation of disability sufficed. In 1804, for instance, the Ancient Britons Benefit Society of the City of New-York instructed nonresident members to submit evidence of their incapacity signed by "a Magistrate, Alderman, or Physician." In 1818, the

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<sup>186</sup> Rope-Makers' Benevolent Society of Brooklyn, "Rules and Regulations," 6; Female Union Beneficial Society of Philadelphia, "Constitution and By-Laws," 6.

Baltimore Beneficial Society similarly requested distant members to submit certificates “proved before a Magistrate, and certified by one or more of his neighbors or the attending physician.”<sup>187</sup>

Organizations that relied on medical examinations to issue disability benefits before 1820 were relatively rare. The Provident Society of New-York, which outlined a role for a “society physician” in their constitution in 1801, was one such association. “When requested by the Standing Committee,” their constitution stipulated, the physician “shall visit any Member of this Society who has applied for benefit, and report his opinion to them respecting the nature of the disorder.” The Provident Society nevertheless specified that this consulting doctor would “receive no fees” for his labors. Thus, while members agreed to incorporate medical opinion into their protocol for distinguishing disability, they nevertheless considered physicians’ contributions not important enough to deserve compensation. Such a decision reflects the limited and generally inconsequential role of doctors in mutual aid organizations during this early period.<sup>188</sup>

Beginning in 1820, however, associations, particularly those composed of white men, began to require that beneficiaries be examined by physicians in controversial cases. The detailed minutes of the Pike Beneficial Society of Philadelphia, which mandated medical evaluations that year, illustrate this development. During the years just preceding 1820, society members had

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<sup>187</sup> Social Society, “The Constitution of the Social Society, Instituted at Schenectady, June 28<sup>th</sup>, 1798” (Schenectady: John L. Stevenson, 1800), 9; Ancient Britons Benefit Society of the City of New-York, “The Constitution,” 7; Baltimore Beneficial Society, “Constitution and By-Laws” (Baltimore: J. Matchett, 1818), 16.

<sup>188</sup> The Provident Society of New-York, “The Constitution” (New-York: James Oram, 1801), 7.

extensively debated the compensation of disabled members. They had denied relief to Jacob Wonderly “on receiving information from his employer that he had been at work,” admonished John W. English for collecting benefits when he was in arrears, and argued for months with John Franks, who had submitted a certificate of disability from a magistrate that overseers determined to be “illegal.” In late 1819, likely with these disputes in mind, society president Joseph S. Colloday formed a committee “to Inquire into the Expediency of Giving the Overseers Power to call in a Physician in Doubtfull Cases.” Two months later, the committee’s suggestions were adopted as a constitutional amendment, which authorized the employment of a physician who would be dedicated to the society’s business, mandated medical evaluations in all controversial cases, and stipulated that members who resisted doctors’ examinations would be expelled. With this amendment, the Pike Beneficial Society of Philadelphia established one of the most systematic and comprehensive procedures for the medical determination of disability by a mutual aid society in America to date. By midcentury, however, its provisions would be standard protocol for most white men’s associations.<sup>189</sup>

Throughout the 1820s, many organizations followed the Pike Beneficial Society of Philadelphia’s lead and incorporated physicians into their decision-making processes, although they often did so gradually. Some societies required doctors’ exams only for certain infractions. In 1825, for example, the Beneficial Society of Journeyman Hatters of Brooklyn denied disability

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<sup>189</sup> Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843, July 28 and November 4, 1817, July 27, August 24, September 28, 1818, December 27, 1819, and January 24 and February 28, 1820.

benefits to members who were caught drinking unless their consumption was “ordered by a Physician.” Other associations, such as the Working Men’s Beneficial Society of Philadelphia, mandated that nonresident members submit certificates of disability from both physicians and justices of the peace. In this case, magistrates were instructed to authenticate not only the members’ incapacities, but also that the doctor was “respectable in his private and professional standing, and in all respects worthy of credit.” Still other organizations embraced the involvement of physicians wholeheartedly. As the constitution of the America Beneficial Society declared in 1820, “where there is any doubt with the stewards as to the member being entitled to the benefits, they shall be empowered to take the advice of a physician of respectability, whose opinion shall be decisive.” Societies moved towards the medical evaluation of disability at different rates, but, by the early 1830s, there was a marked increase in the number of white men’s associations that used physicians to assess claimants.<sup>190</sup>

Societies that contracted with doctors were often particular about the practitioners they selected and subsequently placed great weight on their opinions. After Pike Beneficial Society of Philadelphia members resolved to hire a consulting physician, for example, the appointed committee spent more

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<sup>190</sup> I have studied 23 constitutions of mutual aid societies of white men published before 1820. Of these, 4 stated that overseers could call a physician to evaluate a beneficiary if they deemed it necessary and 2 mentioned physicians among the authorities who could endorse a nonresident member’s application for benefits. Comparatively, of the 21 constitutions I have studied of societies of white men published between 1820 and 1845, 8 mandated medical examinations for beneficiaries in all cases and another 8 required medical reports in certain cases, such as physical distance or particular infirmities. The Beneficial Society of Journeyman Hatters of Brooklyn, “The Constitution and By-Laws” (Brooklyn: Alden Spooner, 1825), 14; The Working Men’s Beneficial Society of the City and County of Philadelphia, “Constitution and By-Laws,” 20 and Appendix; America Beneficial Society, “The Constitution and By-Laws,” 7.

than four months interviewing and evaluating candidates. When they finally recommended George W. Tresse for the position, committee members stressed that they had “particularly Enquired” into his character and believed him “Sufficiently qualified for the above station—and also willing to accept the Proposal made by the Society.” Other organizations selected doctors according to their professional training and standing. The Franklin Beneficial Society of Newportville, Bucks County, Pennsylvania, for instance, noted in their constitution that only certificates “signed by a regular Physician” would be granted compensation.<sup>191</sup>

When societies found physicians whom they trusted and approved, members nearly always deferred to their opinions. Applications for benefits from nonresident members that included acceptable medical certificates were overwhelmingly approved. In 1839, for example, Thomas W. Moulton’s request for compensation from the Judge Marshall Beneficial Society of Pennsylvania, which was signed by the Assistant Surgeon of the U.S. Navy Yard in Pensacola, Florida, was immediately and “unanimously received and paid.” Debates about disability were also almost always resolved according to doctors’ recommendations. For instance, although Pike Beneficial Society of Philadelphia overseers initially denied John Franks compensation for a “dislocation of his shoulder” because he was not at home when they called, they readily issued him relief when he submitted a certificate from Doctor Tresse the following month. Societies comprised of white men came to view

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<sup>191</sup> Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843, February 28, March 27, May 22, and June 26, 1820; The Franklin Beneficial Society of Newportville, Bucks County, Pa., “Constitution,” 6.

physicians as expert evaluators of disability and trusted consultants in the resolution of related disputes.<sup>192</sup>

Societies of women and blacks, in comparison, rarely employed doctors to determine disability. Of the constitutions consulted from six women's societies and twelve societies of free blacks in the United States from 1796-1844, none mentions a role for physicians. When nonresident members requested disability compensation, societies of white women typically required that they verify their incapacities by submitting certificates from witnesses, such as friends and neighbors, authenticated by a minister or local official. Societies of black men and women, in comparison, seldom even required these certificates to be officially endorsed. The Brotherly Union Society of the County of Philadelphia directed absent members to submit evidence of their disabilities and "good conduct" from "respectable persons" where they reside. The Brown Fellowship Society in Charleston similarly noted that stewards would visit "the family of such member as may be out of the state [to] inquire into their circumstances." Associations of women and blacks also continued to resolve disputes about disability internally without involving doctors. As late as 1844, the Brown Fellowship Society constitution noted that conflicts would be settled "by a majority of votes and in case of an equality of votes, the President or presiding officer shall have the casting votes." It also described a rotating Standing Committee of five members who would investigate the controversy and report on it to the society. Thus,

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<sup>192</sup> Judge Marshall Beneficial Society of Pennsylvania, "Minutes," Historical Society of Pennsylvania, June 19, 1839, June 16 and October 20, 1841; Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843, February 26 and March 26, 1821.

although societies of white men increasingly collaborated with physicians to regulate the category of disability and benefit distribution, organizations of women and blacks retained established methods of evaluation and conflict resolution and seemingly refrained from seeking medical advice.<sup>193</sup>

By comparison, in England, both men's and women's societies delineated significant roles for doctors as early as the late eighteenth century. Beginning in the 1780s, numerous English societies required distant members to submit medical certificates to receive compensation and stipulated that physicians' opinions would prevail in cases of controversy. In 1785, the Friendly Society of Women Held at the House of Joseph Deaken asked beneficiaries who went "into the country for the recovery of [their] health" to send notice of their continuing incapacities certified by a "surgeon or physician." The women's society held at the home of William Olieff, in comparison, directed overseers who suspected "any member who is on the box [receiving relief] capable of business" to have her "examined by a physician or surgeon, and if proved to be an imposition she shall be excluded." The Friendly Society of Women held at the house of Benjamin Mason even mandated monthly physician's certificates from all beneficiaries regardless of their location or situation.<sup>194</sup>

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<sup>193</sup> Female Union Beneficial Society of Philadelphia, "Constitution and By-Laws," 8-9; Brotherly Union Society of the County of Philadelphia, "Constitution and Rules" (Philadelphia: Crozet, 1841), 6; Brown Fellowship Society, "Rules and Regulations," 7, 10.

<sup>194</sup> "Rules and Orders to be Observed by A Friendly Society of Women, United for the Mutual Support and Benefit of each other when under real Afflictions: Now held at the HOUSE of Mr. Joseph Deakin, The GREEN DRAGON, In Fore-Street, near Cripplegate," (London, 1785), 10; "Rules and Orders to be Observed by A Friendly Society of Women, United for the Mutual Support and Benefit of each other when under real Afflictions: Now held at the HOUSE of Mr. William Olieff, The Blakeney Head, Norton Falgate," 9; "Articles of a Friendly Society at Coleford in the Parish of Newland, in the County of Gloucester..." (Gloucester: R. Raikes,

English beneficial associations likely employed doctors to determine the extent of an applicant's disability before American societies because of the earlier professionalization of medicine in the region. By the late eighteenth century in England, physicians had organized and institutionalized, separated themselves from a lower-class of barbers and surgeons, and established a small elite learned profession. These developments were only in their nascent stages in America. As such, compared to English society members who regarded doctors as experts on disability and found numerous outlets for their involvement, American society members typically refrained from involving physicians until several decades into the nineteenth century. Many, especially those composed of women and blacks, resisted for much longer.

Even in societies that used physicians to adjudicate disability benefits, controversies about candidates' incapacities and deservingness of compensation continued. In some cases, society members disagreed with doctors' assessments of disability; in others, doctors disagreed with one another and society members struggled to reconcile their divergent opinions. The controversy between John B. Morris and the Pike Beneficial Society of Philadelphia about his suspected venereal disease provides a useful example of both situations. In 1823, when overseers charged Morris with improperly collecting compensation for a disability due to venereal disease, he submitted a certificate from Doctor William Rush stating that his ailments were not occasioned by "imprudence or excess." Society members, however,

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1788), 6; "Rules and Orders to be Observed and Kept by a Friendly Society of Women, held at the house of Mr. Benjamin Mason, at the Old George," (London, 1785), 5. Also see: Rusnock and Dietz, "Defining Women's Sickness and Work: Female Friendly Societies in England, 1780-1830," 60-85.

distrusted Rush's report, deeming it "not...satisfactory to use." They then asked their own society physician, Doctor Tresse, to reexamine Morris and "call in another physician to visit John B. Morris along with him" for yet a third opinion. When Tresse and his colleague, S. G. Emerson, confirmed the following month that Morris' condition "proceeds from a Veneral taint," members were left to determine which physician's assessment was correct and why they had disagreed. Ultimately, the society ordered Morris to "Refund the Overseers the 15 Dollars he received for 3 weeks benefit." However, on account of the situation, some members lost confidence in the medical expertise of society physician Doctor Tresse and proposed multiple resolutions to replace him. As doctors became involved in mutual aid societies, then, they often joined, rather than fully resolved, debates about the nebulous and contentious category of disability.<sup>195</sup>

The health and disability insurance industry thus offered everyday Americans the chance to design and implement constructs of disability separate from those sanctioned by the government. Like federal and state bodies, mutual aid societies typically differentiated disability according to labor and degree, but they also adopted a host of distinct metrics and policies. Women's associations broadened the definition of labor to account for household and reproductive work and, together with men's organizations, factored members' familial situations and perceived morality into their evaluations of deservingness. When conflicts about disability benefits arose,

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<sup>195</sup> Minutes of the Pike Beneficial Society of Philadelphia, 1823-1843, June 23, July, September 22, October 27, November 24, 1823.

societies also determined their own courses of action, with associations of white men following the government's lead in contracting with physicians and organizations of women and blacks resisting medical involvement. Mutual aid societies' regulations and resolutions regarding the category of disability were both more and less restrictive than state and federal governments, providing disabled people with alternative systems through which to advocate for their need and demonstrate their conceptions of their capacities.

## Chapter 6: Performances of Dis/ability by Physically-Atypical Artists

In 1848, approximately ten years before Edwin Forbes etched Saunders K. G. Nellis' portrait, the artist, performer, and comedian arrived back in Philadelphia after two voyages abroad. Between 1844 and 1846, together with his wife Eliza, he had traveled and exhibited throughout the Caribbean from Havana to Curacao. And for the previous two years, he had journeyed across Europe, conducting performances for everyday patrons as well as royal families. Back in the United States, Nellis began the task of coordinating and conducting his shows at home. His first step would have been to design and publish his playbill, which survives and provides a valuable introduction to his work [Figure 3].<sup>196</sup>

The notice began with the eye-catching words “NOVEL EXHIBITION! MR NELLIS BORN WITHOUT ARMS.” It listed his illustrious clientele, including “many of the Nobility and Gentry” and Queen Isabella of Spain, who had given Nellis a “Rich Oriental Costume.” Then, the playbill depicted and described his artistic skills [Figure 4]. Nellis illustrated how he cut silhouettes and designs of “Animals [and] Birds” out of paper. He demonstrated his

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<sup>196</sup> “S.D.C. Nellis,” July 27, 1848, *Index to Passenger Lists of Vessels Arriving at Philadelphia, Pennsylvania, 1800-1906*, FamilySearch, NARA microfilm publication M360 (Washington DC: National Archives and Records Administration, n.d.), FHL microfilm 419,530; “S. K. G. Nellis,” July 27, 1846, Curacao, Dutch West Indies to New York, NY, *New York, Passenger Lists, 1820-1957*, Ancestry.com, NARA microfilm publication M237, 1820-1897, Roll 063, Line 1, List No. 659; “Mr. Saunders K. G. Nellis to Miss Eliza H. Jenks,” Marriage, July 14, 1842, Ancestry.com, *The New England Historical & Genealogical Register* (Boston: The New England Historic Genealogical Society). Saunders K. G. Nellis, “Novel Exhibition!,” 1847-1849, American Antiquarian Society, Worcester MA. I believe that Nellis designed this playbill (rather than, for example, Barnum who employed Nellis from 1841-1845 and 1851-1854) because a similar version was first published in Spain in January 1848; see: “Teatro. Mr. S. K. G. Nellis, Maravilla Del Mundo, Nacido Sin Brazos” (Valencia: Impr. De J. Ferrer de Orga, 1848).

Figure 3: Saunders K. G. Nellis. "Novel Exhibition!" Broadside. 1847-1849. American Antiquarian Society, Worcester, MA. View of the top third of the broadside.

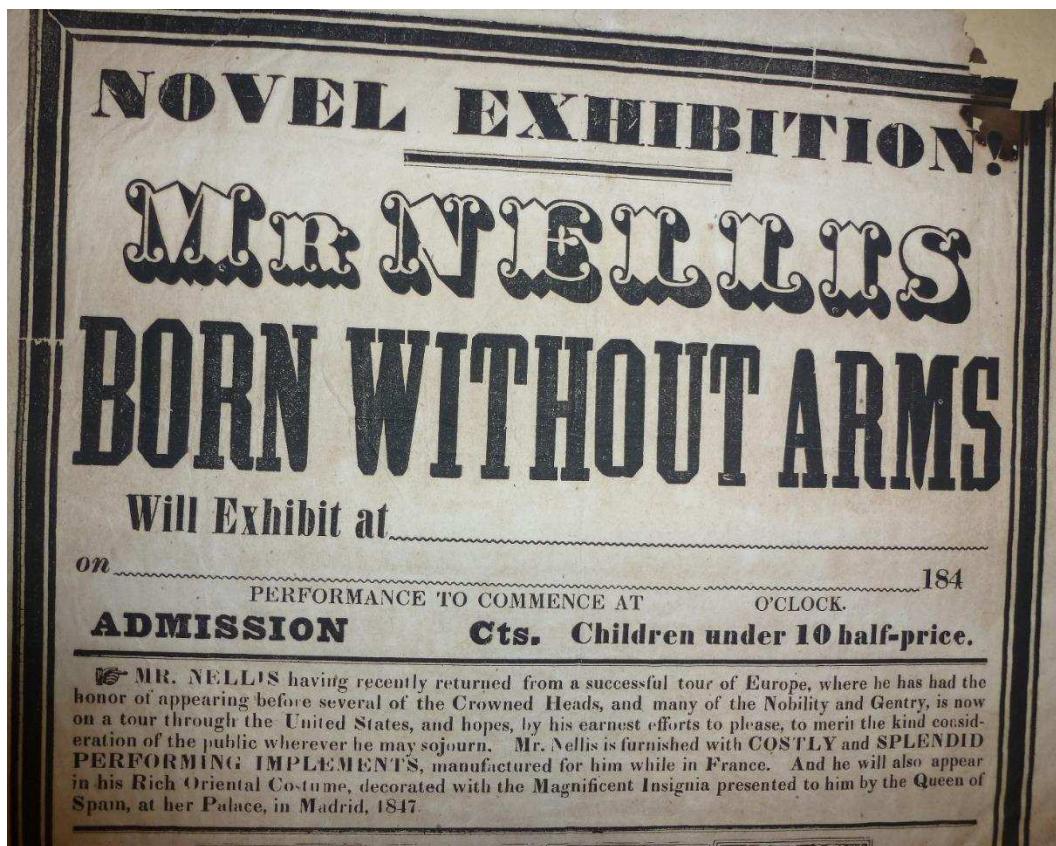


Figure 4: Saunders K. G. Nellis. "Novel Exhibition!" Broadside. 1847-1849.

View of the middle third of the broadside. Clockwise from top left: (1) making paper cuttings; (2) writing calligraphy; (3) winding a watch, and taking out and replacing the crystal; (4) loading and discharging a pistol; (5) playing the accordion; (6) playing the drums; (7) forming a Chinese Love Trap with six playing cards; (8) shooting a bow and arrow; (9) cutting miniature silhouettes; (10) playing the cello; (11) playing the triangle. Nellis also used this montage in a broadside published in Valencia, Spain; see: "Teatro. Mr. S. K. G. Nellis, Maravilla Del Mundo, Nacido Sin Brazos." Valencia: Impr. De J. Ferrer de Orga, 1848.



musical talent by playing the cello, triangle, accordion, and drums. And he broadcast the feats of dexterity that he performed for patrons, which included “Shooting with the Bow and Arrow, AT A QUARTER OF A DOLLAR, held between the fingers of any of the Audience.” In the coming years, spectators from Maine to Wisconsin and South Carolina would herald Nellis’ artistic talents as “unequalled,” “gratifying,” and “triumphs of American genius.”<sup>197</sup>

Nellis’ playbill, like his portrait discussed in the Introduction, depicts corporeal impairment very differently than did the government bureaucrats who oversaw invalid and educational pensions, the judges who evaluated people deemed to be cognitively disabled, and the mutual aid society members who assessed candidates for relief. Rather than portraying his physical limitations as a hindrance to his laboring capacity, Nellis positioned them at the very heart of his artistic productions, performances, and career. “BORN WITHOUT ARMS” were some of the first and largest words on his advertisement. Together with his artistic abilities, he was clear that they were the source and subject of his earning potential.<sup>198</sup>

Even more, as Nellis intimated in his illustrations and descriptions of his “WONDERFUL ACHIEVEMENTS!,” his impairments not only facilitated his artistic and laboring capabilities, but also may have enhanced them. His skills in paper cutting surpassed those of the preponderance of his patrons [Figure 5]. He could complete dexterous tasks, such as shooting an arrow at a

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<sup>197</sup> Nellis, “Novel Exhibition!;” “Mr Nellis, Born Without Arms,” *Gleason’s Pictorial Drawing-Room Companion* 1, 33 (Dec 13 1851), 517; H. A. G., “Editorial Letters from the West Indies, No. VI, Passage to St. Croix,” *Christian Reflector* 9, 15 (Apr 9 1846), 58.

<sup>198</sup> Nellis, “Novel Exhibition!”

Figure 5: Saunders K. G. Nellis. Cut Paper Picture. No date. Paper, Ink.

Historic New England, Boston, MA. Inscribed: "For S. G. Tripp, Esq." /

"Providence, RI" / "By S. K. G. Nellis" / "Born without arms" / "New York."



quarter, which, as one reviewer noted, “a vast majority of mankind cannot [do] with their hands, without long and arduous practice.” And, over the course of his lifetime, Nellis earned a sizeable profit from his shows, his income exceeding that of most of his clientele and comfortably supporting his travels from France to Canada and Chile, his professional expenses, and his family. For Nellis, physical impairment did not impede labor; instead, it enabled his long, profitable, and successful career.<sup>199</sup>

Nellis was one of many “disabled artists”<sup>200</sup> in the Early Republic who earned their livings by exhibiting both their artwork and their atypical bodies. Like Nellis, these artists and performers traversed the ever-expanding networks of road, boat, ship, and rail to reach new consumer markets throughout the United States and in Europe, Canada, the Caribbean, and South America. They pursued muscular advertising campaigns, publishing newspaper notices and broadsides with eye-catching typefaces and imagery. They also masterfully adapted their artwork and performances to the changing cultural and commercial landscape of the Early Republic. Many disabled artists painted miniatures and cut silhouettes, which were popular styles at the time. As museums, circuses, and theater troupes became widespread, many also coupled their self-directed and -managed shows with employment at

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<sup>199</sup> Nellis, “Novel Exhibition!;” “Mr Nellis, Born Without Arms,” *Gleason’s Pictorial Drawing-Room Companion*, 517; H. A. G., “Editorial Letters from the West Indies, No. VI, Passage to St. Croix,” *Christian Reflector*, 58.

<sup>200</sup> I have chosen to refer to artists and performers who exhibited both their artwork and their unusual bodies as “disabled artists.” This does not imply that these artists saw themselves as disabled, that their customers viewed them as disabled, or that I consider these artists to be disabled. Instead, I simply invoke the term as shorthand for an artist who premised their shows on the simultaneous display of their artistic productions and capacities and their atypical physiques.

these institutions, pursuing both simultaneously into the mid-nineteenth century. Perhaps the most important cultural and commercial opportunity that disabled artists exploited for their professional advancement, however, was their audience members' deeply rooted but newly heightened fascination with bodily incapacity and disability. The emerging governmental and institutional categories of disability and ensuing negotiations about everything from invalid pension allotments to mutual aid society benefits had piqued Americans' interest in the relationship between impairment and labor. Using and presenting their physical limitations as the very source of their labor, these artists advanced alternative, perhaps more empowering conceptions of disability, gratifying their patrons' curiosities and securing their own profits.<sup>201</sup>

This chapter studies more than twenty artists and performers with physical impairments and the ways they used opportunities in the early nineteenth-century marketplace to present their own interpretations of dis/ability. As Nellis' playbill indicates, it finds that these artists captivated spectators by highlighting capacity as much as incapacity, thereby projecting

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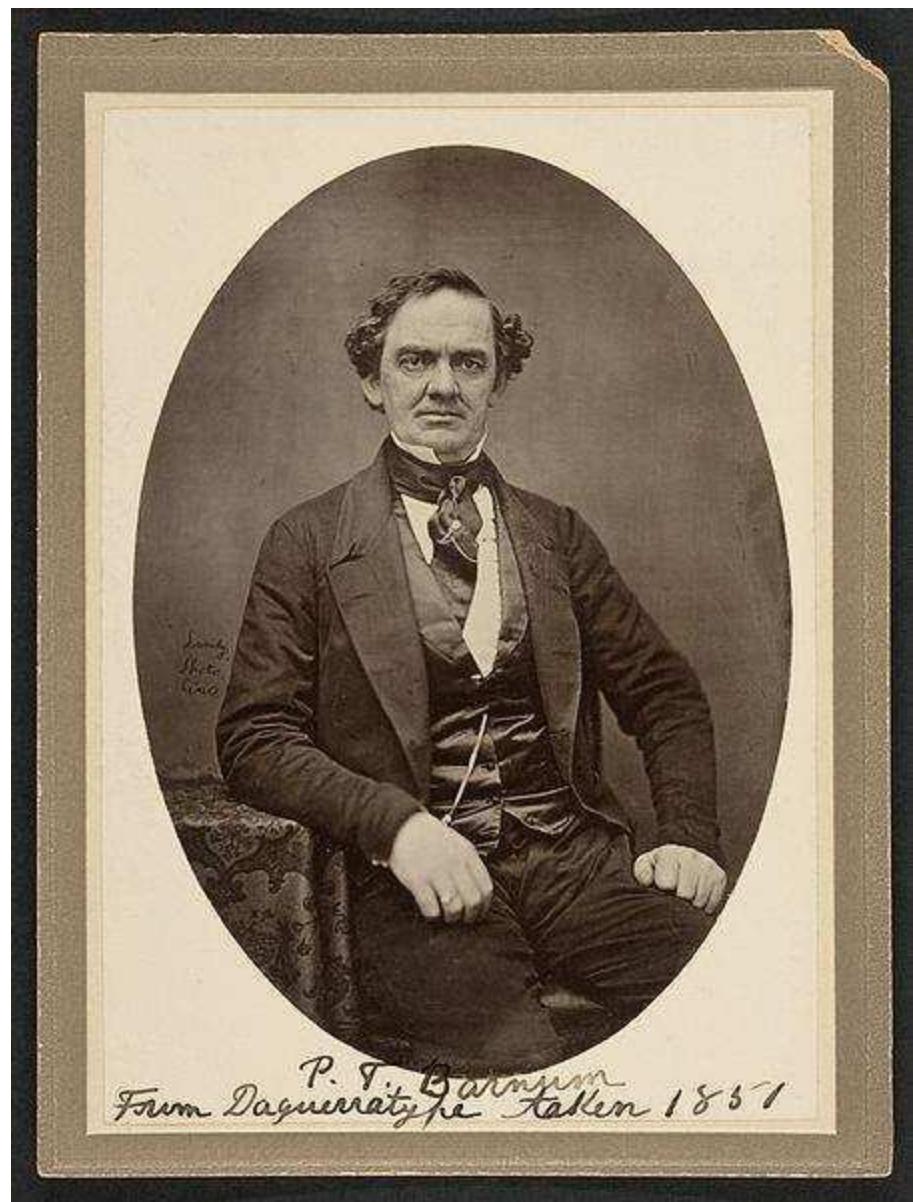
<sup>201</sup> For developments in transportation, see: George Rogers Taylor, *The Transportation Revolution, 1815-1860* (New York: Rinehart, 1951). For typefaces and print culture, see: Stephen O. Sake, "Loy's 19<sup>th</sup>-Century Type Designers," in *Nineteenth-Century American Designers & Engravers of Type*, eds. William E. Loy, Alastair M. Johnson, and Stephen O. Sake (New Castle, DE: Oak Knoll Press, 2009): 21-31. For miniatures and silhouettes, see: Anne Verplanck, "Facing Philadelphia: The Social Function of Silhouettes, Miniatures, and Daguerreotypes, 1760-1860" (Ph.D. Dissertation, College of William & Mary, 1996); Robin Jaffee Frank, *Love and Loss: American Portrait and Mourning Miniatures* (New Haven: Yale University Art Gallery, 2000); Catherine Kelly, "Object Lessons: Miniature Worlds," *Common-Place* 3, 2 (January 2003); Alice Van Leer Carrick, *Shades of Our Ancestors: American Profiles and Profilists* (Boston: Little, Brown, and Company, 1928). For museums and sideshows, see: Andrea Stulman Dennett, *Weird & Wonderful: The Dime Museum in America* (New York and London: New York University Press, 1997), ch. 1; Robert M. Lewis, *From Traveling Show to Vaudeville: Theatrical Spectacle in America, 1830-1910* (Baltimore and London: The Johns Hopkins University Press, 2003); Robert Bogdan, *Freak Show: Presenting Human Oddities for Amusement and Profit* (Chicago: University of Chicago Press, 1988), ch. 1.

an image of impairment that not only coexisted with labor but also with enhanced earning potential. Such a portrayal complicated emerging political, legal, and institutional constructions of disability that related bodily to laboring inability, confounding customers' expectations and drawing them to these artists' shows. Some disabled artists were more successful than others, but this chapter finds that many pursued long and profitable careers.

By the mid-nineteenth century, museum managers, such as P. T. Barnum [Figure 6], began to recognize these artists' potential for profit and the market for the performance of atypical physical impairment and ability more generally. Using their commercial connections, financial strength and, significantly, their relationships with physicians, these showmen began to wrest control of the industry from disabled artists by hiring them to work at their establishments, managing their artwork and performances, and taking shares of their profits. Ultimately, showmen took from disabled artists the very thing that had so compelled viewers in the first place—their capacity for independent, economically productive labor—thus rendering their shows primarily displays of their impairments rather than their artistic skills. Although many artists, such as Nellis, sustained autonomous careers into the mid-nineteenth century, this changing cultural and commercial landscape constrained their professional opportunities.

Scholarship on artists and performers who exhibited both their artwork and unusual physiques has principally focused on the mid-to-late-nineteenth century when the majority were employed in so-called freak shows. This chapter instead examines the lives and careers of such artists before Barnum and other museum operators established control over the entertainment

Figure 6: Phineas Taylor "P. T." Barnum. Inscription: "P. T. Barnum From Daguerreotype Taken 1851." Harvard Theater Collection, Harvard University, Cambridge, MA.



P. T. Barnum  
From Daguerreotype Taken 1851

industry and its proceeds. Thousands of advertisements that these artists published about themselves and their shows in North and South America, the Caribbean, and Europe not only detail their artistic productions and strategies for appealing to consumers, but also serve as a means for tracking their crisscrossing journeys. These sources are studied alongside these artists' extant visual works, of which about 150 pieces have been located, and audience members' textual and pictorial depictions of their visits, of which about 100 accounts appear in diaries, letters, newspapers, and magazines. Census records, immigration documents, and writings by showmen and physicians provide additional information. In all, these materials demonstrate how disabled artists took advantage of opportunities in the early nineteenth-century market economy to present alternative, more enabling understandings of bodily impairment, which captivated patrons and ensured their support. The sources further reveal these artists' declining commercial potential—and perhaps the fading of their unique visions of impairment—as museum managers gained control over the industry for the performance of dis/ability towards the mid-nineteenth century.<sup>202</sup>

### *Performances of Dis/ability*

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<sup>202</sup> For an introduction to freak show scholarship, see: Bogdan, *Freak Show*; Rosemarie Garland Thomson, ed. *Freakery: Cultural Spectacles of the Extraordinary Body* (New York: New York University Press, 1996). For exploitation and empowerment in freak shows, see: Bogdan and Gerber in Garland Thomson, ed., *Freakery*; Ellen Samuels, "Examining Millie and Christine McKoy: Where Enslavement and Enfreakment Meet" *Signs* 37, 1 (Autumn 2011), 53-81. For the ethics of studying freak shows, see: David Mitchell and Sharon Snyder, "Exploitations of Embodiment: *Born Freak* and the Academic Bally Plank," *Disability Studies Quarterly* 25, 3 (2005).

In January 1808, two young women artists, both about twenty years old and with significant physical impairments, arrived in Charleston, SC. For the past ten years, Martha Ann Honeywell had exhibited her singular body—she was born without arms and hands and with only one foot with three toes—and her artistic accomplishments in embroidery, waxwork, miniature writing, and paper cutting to audiences throughout New England and the Mid-Atlantic. Sarah Rogers, who was born without the use of her arms, hands, and legs, had begun similar performances two years prior. As Rogers described in the newspaper advertisement she published upon her arrival in Charleston, she could “paint elegant Flowers and Landscapes, Write, Thread a Needle, Cut Paper or Cloth with the Scissors held in her MOUTH, &c” in ways that “surpass all human belief.” Although each woman arrived in Charleston independently (Honeywell may have been accompanied by her mother) and obtained separate exhibition and lodging spaces, they soon decided to conduct their shows together at Mrs. Cochran’s boarding house on King Street. There, they charged a one-dollar admission fee to patrons who, as they stated in a joint advertisement, desired to view their “pleasing and highly interesting performance” and had “curiosity enough to see them at work.”<sup>203</sup>

First and foremost, Honeywell and Rogers’ exhibitions in Charleston and in Savannah where they later traveled and performed together highlighted their artistic abilities. Newspaper notices described them as “astonishing

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<sup>203</sup> “The Curious Young Lady,” *City Gazette and Daily Advertiser* (Charleston SC), January 19, 1808; “Astonishing Female Artist!!!!,” *City Gazette and Daily Advertiser*, January 20, 1808; “Miss Sarah Rogers and Miss Martha A. Honeywell,” *City Gazette and Daily Advertiser*, March 2, 1808. Honeywell traveled and exhibited with her mother until about 1810, but there is no specific mention of her presence in Charleston.

female artists” and discussed the “great ingenuity and elegance” with which they pursued “the fine arts in a most extraordinary manner, without the natural use of the Hands and Arms.” The women also arranged their performance spaces to best display their artistic productions and techniques. As Honeywell later described, visitors to their shows first entered a room where their needlework, waxwork, paper cuttings, miniature writings, watch-papers, drawings, and paintings were exhibited for purchase. Then, if they so desired, they progressed to a second room where Honeywell and Rogers demonstrated their artistic methods and created customers’ silhouettes. Both artists performed their artistic techniques for patrons with a theatrical flair. One reviewer, for example, recalled that Honeywell “several times drew the thread out of her needle to show us that she could rethread it without difficulty,” while a “Correspondent” for the *Political Observatory* commented on how Rogers had shown him her method for drawing “that difficult flower to copy, the passion-flower.” Honeywell and Rogers presented themselves as visual artists and predicated their shows on the production and performance of their artistic talents.<sup>204</sup>

And Honeywell and Rogers were extremely talented. One of Honeywell’s finest works—which she may have presented to Queen Charlotte, Prince William, and Princess Elizabeth of England in 1817—reveals her mature artistic style [Figure 7]. The composition, which is about eight

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<sup>204</sup> “The Curious Young Ladies,” *The Republican; and Savannah Evening Ledger* (GA), April 5, 1808; “Astonishing Female Artist!!!!,” *City Gazette and Daily Advertiser*, January 20, 1808; “Miss Honeywell,” *New-York Commercial Advertiser* (NY), September 28, 1809; “Extraordinary Phenomenon!,” *Vermont Republican* (Windsor), November 27, 1820; “Female Artist,” *Political Observatory* (Walpole NH), July 18, 1806.

Figure 7: Martha Ann Honeywell. Embroidered Paper Cutting of the Lord's Prayer. Unknown Date. Paper, Ink, Silk. Colonial Williamsburg Foundation, Williamsburg, VA.



inches in diameter, showcases scripted words and letters of the Lord’s Prayer cut from cream-colored paper. Honeywell adorned the Prayer with vines and blooming potted plants and pasted the whole onto black paper for display. She then decorated this cutwork with eight green cuttings resembling trees and positioned it in a second four-pointed star. Made from cream, pin-pricked paper, this second star was embellished with multi-colored floral silk needlework and slashed and embroidered edges. Finally, Honeywell encircled the entire composition with twelve turquoise and green paper cuttings of blooming potted plants and tree-like sprigs. The work is extraordinarily intricate and complex, demonstrating her skillfulness in composition and design, expertise with diverse media, and overall proficiency as a visual artist. Although most of Honeywell’s productions were much less detailed—she created patrons’ silhouettes in a matter of seconds, for example [Figure 8]—she undoubtedly attained a high level of artistic skill over the course of her career.<sup>205</sup>

Rogers was also a talented artist, although fewer of her pieces survive, perhaps because of her death at the young age of 23. Works from her early years as an artist—such as her water-colored drawing of a bird perched on a branch with a dragonfly circling above [Figure 9]—show careful attention to detail and proficiency in shading. However, they also take a rudimentary approach to composition and perspective; as one reviewer declared in 1806, Rogers would require “a little more experience...” before “the Benevolent and

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<sup>205</sup> Martha Ann Honeywell, “Paper Cutting of the Lord’s Prayer and Flowers,” Colonial Williamsburg Foundation, Williamsburg VA; “Royal Collection,” *The Morning Chronicle* (London, England), May 28, 1819; “Never Exhibited Here Before,” *The Hull Packet* (Hull, England), October 12, 1819.

Figure 8: Martha Ann Honeywell. Silhouette of Eliza L. Tinsley Wharton.  
Paper, Ink. 1842. Lynchburg Museum, VA. Note embellishments in gold ink.



Figure 9: Sarah Rogers. Watercolor of a Bird and Dragonfly. Unknown Date. Watercolor on Paper. Hall and Kall Peterson Fund for Paintings, Print, Drawings, and Photographs, Historical Deerfield, MA.



the Curious together with *mere* Connoisseur will behold in her much to admire and esteem." Although few of Rogers' later pieces have been located and identified, viewers' accounts and exhibition catalogs suggest that her skills improved significantly. In 1807, Edward Savage, a museum proprietor in New York City, "pledge[d] his reputation as an artist [that] he had seen her drawing, specimens of design, taste, and execution, which astonished him, and will bear minute criticism." In 1811, Rogers' "Landscape, painted by holding the brush in her mouth" was selected for the Society of Artists of the United States' first exhibition in Philadelphia. And, in 1813, her painting of Mount Sidney, the home of Philadelphia mayor John Barker, Esq., was included in the Third Annual Exhibition of the Columbia Society of Artists and the Pennsylvania Academy. Sadly, it was also at Mount Sidney that Rogers' passed away from "decay" later that year. Nevertheless, in her short lifetime, like Honeywell, she gained much artistic skill and renown.<sup>206</sup>

Honeywell and Rogers premised their shows on the production and performance of their visual artwork; however, both knew that their success with customers was also dependent on their presentation of their physical impairments. In fact, it was the apparent juxtaposition between their creative capabilities and corporeal limitations that so captivated spectators,

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<sup>206</sup> For more on Rogers, see: Anne Digan Lanning, "Sally Rogers: The Celebrated Paintress," *Historic Deerfield* 13 (Summer 2012), 2-7. Sarah Rogers, *Watercolor*, Historical Deerfield, Deerfield, MA; "Female Artist," *Political Observatory*, July 18, 1806, emphasis is original; "A New Mode of Painting," *New-York Commercial Advertiser*, April 15, 1807; Society of Artists of the United States, *First Annual Exhibition of the Society of Artists of the United States* (Philadelphia: Tho. L. Plowman, 1811), 17; Columbian Society of Artists, *Third Annual Exhibition of the Columbian Society of Artists and the Pennsylvania Academy* (Philadelphia: T. and G. Palmer, 1813), 9; "Internments in the Free Quakers Burial Ground, from the 30 Octo to the 13 of November 1813," Philadelphia City Archives, PA. Mayor Barker also served as a witness to Rogers' death.

challenging their preconceived notions of bodily incapacity and disability. Honeywell and Rogers deliberately emphasized their atypical physical characteristics in their advertisements and exhibitions. Honeywell, for example, began most of her notices by asserting that she was “born WITHOUT ARMS.” Rogers, too, regularly capitalized and italicized phrases about her body, writing, for instance, that she was “deprived of the USE of HANDS” and painted “*with her mouth*.” During exhibitions, both artists also appealed to patrons’ curiosities by unabashedly revealing and even performing their impairments. According to one spectator, Honeywell conducted her shows by sitting on a table “with her lower limbs curled under her *à la Turque*” or as if sitting astride a horse. To attract viewers’ attention to her foot and three toes, with which she created her miniature writing and needlework, she also wore an ornate lace covering and a gold and pearl ring. Visitors to Rogers’ exhibitions similarly noted that she highlighted her anomalous physique, for example, by showing how she could move across the room “by the *mere exertion* of her *body*” to fetch artistic materials. Honeywell and Rogers were accomplished artists, but their exhibitions were nevertheless presentations of their physical incapacities as much as their artistic skills.<sup>207</sup>

The dual display of impairment and artistic ability proved remarkably compelling to consumers. In reviews, diaries, and letters, many expressed

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<sup>207</sup> “Miss ROGERS,” *Poulson’s American Daily Advertiser* (Philadelphia PA), February 28, 1810, emphasis is original; “Miss Honeywell’s Splendid Gallery of Cuttings and Needlework,” *Atkinson’s Saturday Evening Post* (Philadelphia PA), October 27, 1831, emphasis is original; “Historical Rings,” *Harper’s Bazaar*, January 14, 1871, emphasis is original; “A Real Object of Charity” (Walpole, NH: Press of the Political Observatory, 1806), 6, emphasis is original.

wonder and admiration that Honeywell and Rogers' physical limitations had not impeded their artistic labors and, in some cases, even seemed to enhance them. A spectator at Honeywell's show in Louisville, KY, for example, praised her ability to work and earn her living despite her physical limitations. As "Philanthropy" asserted,

Few things are more pleasing to the contemplative mind than the successful exertions of those who being by nature and accident deprived of their limbs have by increasing endeavors so far overcome the many obstacles that oppose them [and] by their industry and skill have become enabled to obtain an honorable livelihood.<sup>208</sup>

Other visitors went further and suggested that Honeywell and Rogers' impairments had even facilitated their labors, rendering them more capable than those with comparatively able bodies. A contributor to the *New-England Palladium*, for instance, discussed the "wonders beyond description" that Rogers performed with her mouth and concluded that "altho' she is deprived of the use of hands and feet, nature has been more bountiful to her" than others. Rubens Peale similarly argued that Honeywell's needlework skills superseded those of her ablebodied counterparts, declaring that she "will thread a fine needle much quicker than any other person with their hands can." And Martha, a patron who attended Honeywell's show in Washington DC, contended that Providence had given her superhuman capacities "rivaling the ingenuity of [the Greek gods of arts and crafts] Arachne and Minerva" on account "of her unparalleled deprivation by nature—the want of

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<sup>208</sup> "Philanthropy," *Daily Louisville Public Advertise* (KY), September 22, 1830.

her arms." Audience members expected to see bodily impairment as a hindrance to labor and achievement. By portraying it instead as consonant with and even enabling success, Honeywell and Rogers attracted customers and secured commercial profit.<sup>209</sup>

Both artists used their compelling demonstrations of artistic capacity and physical incapacity to pursue productive and lucrative careers. Honeywell worked as an artist and performer for nearly sixty years, traveling and exhibiting throughout the United States and in England, Ireland, France, and Canada. She earned a considerable income, the proceeds from her ticket and artwork sales covering the expenses of her travels, accommodations, artistic materials, and personal necessities. She also gained prestige as an artist and entertainer, presenting her work to English royalty and nobility and to President John Quincy Adams. Although Rogers' career was shorter than Honeywell's, she, too, supported herself with her earnings and received recognition from well-connected patrons, such as Philadelphia's Mayor Barker, and prominent artists, such as Charles Willson Peale who arranged the Society of Artists of the United States' shows in which her work appeared.<sup>210</sup>

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<sup>209</sup> "Communication. Female Artist," *New-England Palladium* (Boston MA), August 8, 1806, emphasis is original; "The Last Two Weeks of Miss Honeywell's Stay," *Baltimore Patriot* (MD), December 11, 1828; Martha, "For the National Intelligencer," *Daily National Intelligencer* (Washington DC), April 6, 1832.

<sup>210</sup> "Royal Collection," *The Morning Chronicle* (London, England), May 28, 1819; "Never Exhibited Here Before," *The Hull Packet* (Hull, England), October 12, 1819; Martha Honeywell to John Quincy Adams, January 29, 1829, Adams Family Papers, Massachusetts Historical Society, Boston; Society of Artists of the United States, *First Annual Exhibition of the Society of Artists of the United States*; Columbian Society of Artists, *Third Annual Exhibition of the Columbian Society of Artists and the Pennsylvania Academy*. Honeywell and Rogers also donated "handsomely cut papers and needlework...likewise [Honeywell's] shoes, which exactly resemble the diminutive shoes of the Chinese ladies" and "a drawing of Flowers," respectively, to Charles Willson Peale's Philadelphia Museum in 1807; "Late Donations and

To modern sensibilities especially, pursuing a profession premised in part on the display and performance of one's atypical body, no matter how profitable, seems demeaning and undesirable. There is no question that, as women with significant physical impairments in the Early Republic, Honeywell and Rogers had few career opportunities available to them and were subject to visitors' derogatory and patronizing gazes and responses, which clearly marked them as social others. Both women occasionally received negative and derisive reviews from visitors who mocked their physiques by capitalizing and italicizing words of the body parts they lacked. In 1806, for example, the *Salem Gazette* published a supposedly humorous "anecdote" in which a gentleman at Rogers' exhibition "observed to her that she wrote a very pretty HAND" and she replied "*Tos...with my pretty MOUTH.*" In 1828, the editors of the *Lancaster Gazette* also ridiculed Honeywell's body and sexuality by playfully imagining that she might "bestow her *foot* upon some one of our numerous host of bachelors" and concluding that they "can have no especial dread of her *embraces.*" Honeywell and Rogers undoubtedly had limited vocational prospects, pursued careers in which consumers scrutinized and objectified their bodies, and faced great challenges in their efforts to appeal to consumers and earn their livelihoods.<sup>211</sup>

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Additions to the Philadelphia Museum," *Poulson's American Daily Advertiser* (Philadelphia PA), October 10, 1807.

<sup>211</sup> "Anecdote," *Salem Gazette* (MA), July 15, 1806, emphasis is original; "Hands Off!" *Lancaster Gazette* (PA), in *The Pittsfield Sun* (MA), July 31, 1828, emphasis is original. My analysis of the careers of Honeywell, Rogers, and other disabled artists, and this paragraph and the next in particular, are importantly influenced by the debate between Bogdan and David A. Gerber in Garland Thomson, ed., *Freakery*.

Nevertheless, there is much more to their stories than exploitation. Although both artists let patrons examine and evaluate their impairments during shows, they returned these gazes by using their spectators' fascinations for their own personal and professional advancement. Additionally, there are very few extant negative reviews of Honeywell and Rogers' work. Although some audience members responded with derision and condemnation, the vast majority reacted positively, lauding their creative and laboring capabilities. In many cases, supportive customers even heralded Honeywell and Rogers as exemplary American women and citizens. After describing Honeywell's "extraordinary merits" and "female excellence," for example, "Philanthropy" "publicly recommend[ed her] to the merited encouragement of her own sex in particular, and to all who can appreciate virtuous industry, and female ingenuity and skill." One writer suggested that Honeywell was a model for the American middle class, stating that her ability to transform herself from a "helpless being, a burden to herself, her friends, and society," into a productive member of the nation could teach viewers a "lesson of usefulness and humility." A contributor to the *New-York Commercial Admire*r even envisioned Rogers as a paragon for humanity, praising her artistic "pursuits which dignify the human character." Honeywell and Rogers' surprising presentations of their bodies and skills seemed to convince many viewers, in ways they found curious and compelling, that physical impairment could facilitate labor, rather than hinder it.<sup>212</sup>

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<sup>212</sup> "Philanthropy," *Daily Louisville Public Advertiser*, September 22, 1830; "For the National Intelligencer," *Daily National Intelligencer*, April 6, 1832; "Communication," *New-York Commercial Advertiser*, April 16, 1807.

Honeywell and Rogers were just two of many early nineteenth-century artists and performers with physical impairments who portrayed capacity and incapacity to patrons with similar results. For instance, Sarah Biffin, an English artist with whom Honeywell exhibited at the Bartholomew Fair in London in 1811 and was also born without hands and arms, was widely recognized for her miniature paintings and embroidery, receiving training and patronage from the Earl of Morton, among other British royalty, and a prize medal from the Royal Society of Arts [Figure 10]. Like Honeywell and Rogers, Biffin presented herself, first and foremost, as an accomplished visual artist. However, she also attracted customers with the display of her anomalous physique, beginning many of her advertisements with enlarged and embellished words similar to Honeywell's advertisements: “BORN *Without Arms and Hands!*” Although Biffin struggled to obtain commissions in her later years, especially after the death of the Earl of Morton, her unexpected combination of artistic labor and impairment remained compelling to patrons. As a “TESTIMONIAL from the FRIENDS and ADMIRERS of the celebrated MISS BIFFIN” explained in 1843, she “is celebrated because, though born without hands or arms, she has had the extraordinary perseverance to attain, by laborious efforts, the art of miniature painting.” Biffin used audience members’ fascinations with her distinctive body and skills to travel throughout the United Kingdom and sustain her career as a miniature painter and embroiderer until her death in 1850 at the age of sixty-six.<sup>213</sup>

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<sup>213</sup> “Bartholomew Fair,” Caledonian Mercury (Edinburgh, Scotland), September 7, 1811; *Journal of the Society of Arts, Vol. XLIII* (London: George Bell and Sons, 1895), 799; “Testimonial from the Friends and Admirers of the Celebrated Miss Biffin,” *The Morning Post*

Figure 10: Sarah Biffin (Mrs. E. M. Wright). Miniature Self-Portrait. 1830.

Watercolor on Paper. National Galleries of Scotland, Edinburgh.



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(London, England), February 13, 1843. Also see: Ellen Clayton, *English Female Artists* (2 vols., London: Tinsley Brothers, 1876), 1:395-397.

During this same period in France, Caesar Ducornet, who was of smaller stature and without arms, hands, and one leg, also pursued a career as a historical painter. Born to impoverished parents in Lille, he gained admission to the French Royal Academy of Painting, where he earned numerous medals; composed portraits of King Louis Philippe I, which were distributed to mayors' offices throughout the country; and exhibited his artwork at the Louvre. Like Honeywell, Rogers, and Biffin, however, despite Ducornet's artistic abilities and achievements, his impairments remained a source of interest among customers, who often noted their surprise and wonder at his artistic and laboring capabilities. As the editors of *The Leisure Hour* recalled, after they arrived in Ducornet's studio where he was painting a portrait of General François-Marie-Casimir Négrier, "for some minutes [they] remained standing in the middle of the room, forgetful of ceremony, and stupefied and mute" watching "this singular phenomenon" paint "in a manner more than marvellous!" [Figure 11]. Ducornet, like other disabled artists, faced considerable challenges as he pursued his career: he was excluded from the highest prizes at the Academy because of his impairments and he struggled to support himself and his aging parents with commissions while living in Paris. Nevertheless, by capitalizing on his artistic talents and his patrons' fascinations with his simultaneous display of physical impairment and artistic accomplishment, he sustained his career until his death at age fifty in 1856.<sup>214</sup>

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<sup>214</sup> "Caesar Ducornet," *The Leisure Hour* (London: William Stavens, 1856), 569. Also see: "Caesar Ducornet," *The National Magazine: Devoted to Literature, Art, and Religion* 11 (October 1857), 307; "Caesar Ducornet, the Painter," *Saturday Evening Post*, October 4, 1856; "The Bird's Nest," *Ballou's Pictorial Drawing-Room Companion* 13, 6 (August 8, 1847), 85.

Figure 11: Louis Joseph César Ducornet. *Portrait du Général François de Négrier sur le Champs-de-Mars à Lille*. 1856. Musée des Canoniers, Lille, France.

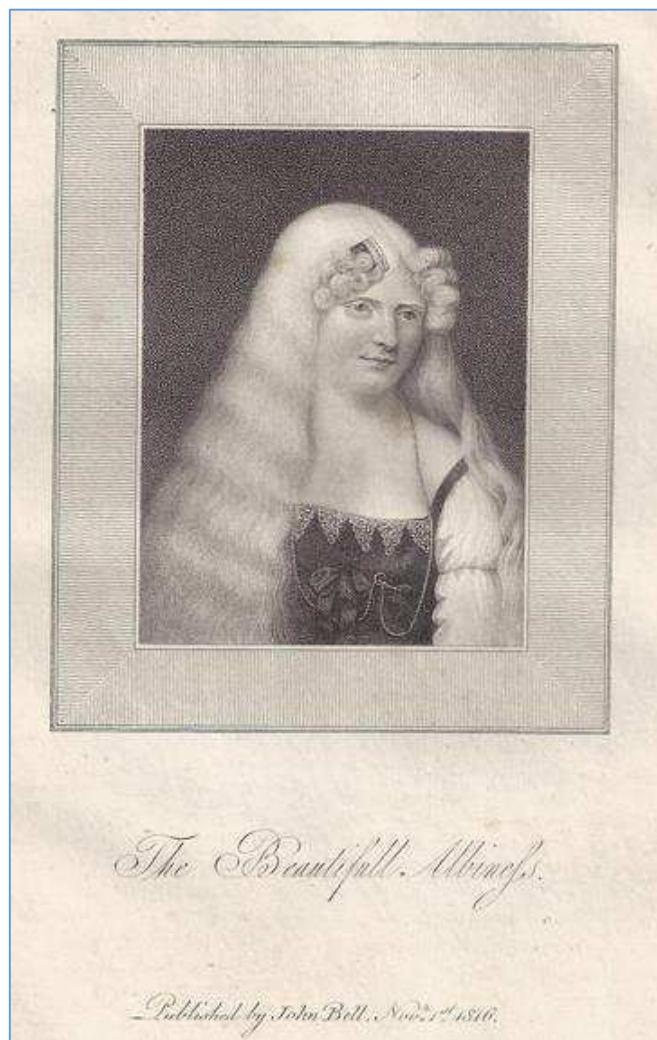


Other performers juxtaposed bodily incapacity with other seemingly-surprising qualities and talents. For instance, E. Hervey, who exhibited as “the Albiness” in England, Scotland, Canada, the United States, and Cuba from 1806 to 1820, initially performed magic tricks for visitors but soon focused her shows on what they seemed to find most compelling: the combination of her albinism and her beauty [Figure 12]. Due to taboos about sexuality and impairment and assumptions that physical anomalies were unattractive and undesirable, audience members expected that Hervey’s appearance would be unsightly. Describing herself as “beautiful” with “peculiarities less pleasing than wonderful,” she challenged these notions and enticed spectators to her shows. Customers were overwhelmingly complimentary of Hervey’s exhibitions, expressing surprise and wonder at how her albinism coexisted with and even enhanced her beauty. A client from Albany, NY, for instance, declared that her “complexion [was] of the most transparent purity, though its appearance [was] certainly unnatural,” while a viewer from Boston described the strange “tremulous motion” of her eyes that captured light with “unusual brilliancy, emanating from pupils that resemble the twinkling of a star.” Until her death in Havana in 1830 at the age of thirty-three, Hervey used her compelling appearance and skills at interacting with patrons—one noted that she “possesse[d] the happy art of warding off and repressing impertinent remarks, without being impolite”—to secure her consumer base, advance her career, and earn her livelihood.<sup>215</sup>

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<sup>215</sup> For more on taboos about impairment and sexuality, see: Catherine Kudlick, “Modernity’s Miss-Fits: Blind Girls and Marriage in France and America, 1820-1920,” in *Women on Their Own: Interdisciplinary Perspectives on Being Single*, eds. Rudolph M. Bell and Virginia Yans (New Brunswick, N.J. and London: Rutgers University Press, 2007). “The Beautiful Albiness Lady,” *The Morning Post* (London, England), November 1, 1816; “Wonderful Phenomenon,”

Figure 12: Unknown Engraver. *The Beautiful Albiness*. Published by John Bell. *La Belle Assemblee* 89 (October, 1816).



*Caledonian Mercury* (Edinburgh, Scotland), February 1, 1817; "Among the curiosities of the times, we find the following advertisement in the Quebec Gazette," *Providence Patriot & Columbian Phenix* (RI), September 27, 1817; "The Beautiful Albiness," *Albany Argus* (NY), October 28, 1817; "The Celebrated Albiness," *Baltimore Patriot & Mercantile Advertiser* (MD), March 17, 1820. Hervey exhibited magic tricks at Mr. Wigley's Royal Promenade Rooms in London from about 1806-1810; see: "Among the Many Amusements in the Metropolis," *The Morning Chronicle* (London, England), June 27, 1806; "The Three Graces," Hand-Colored Etching, Print by William Heath (London: S. W. Fores, 1810), British Museum, London. "The fair Albiness," *Boston Commercial Gazette* (MA), August 10, 1818; "The Albanese," in "Biographical Sketches of Illustrious and Distinguished Characters," *La Belle Assemblee* 89 (October, 1816), 147. Charles Willson Peale, Rembrandt Peale, and Anna Claypoole Peale also painted portraits of Hervey, see: Charles Willson Peale, "An Albiness, Taken from Life, C. W. Peale," *Catalogue of the National Portrait and Historical Gallery, Illustrative of American History* (Cincinnati: Gazette, Company Print, 1852), Pre-1877 Art Exhibition Catalogue Index, Smithsonian American Art Museum, Washington, DC; "Portraits and Miniatures by Charles Willson Peale," *Transactions of the American Philosophical Society* 42, 1 (1952), 104.

Of course, there were also disabled artists and performers who were much less successful in their pursuit of occupations premised on the presentation of their capacities and incapacities. Their stories reveal the significant challenges not only of attracting customers and earning a living, but also of maintaining personal and professional autonomy, especially from museum and sideshow operators who hoped to capitalize on these artists' potential for profit. In the wake of Hervey's tour along the eastern seaboard of the United States, for example, many people with albinism also established public exhibitions of themselves, although their careers were generally shorter-lived, less lucrative, and more exploitative. Shortly after Hervey left New York City, for example, *The New-York Columbian* announced that another "Albino of twenty-nine years of age" was in the city "for the purpose of relieving his family of the burden of his support, by the exhibition of himself." The man who styled himself "The Albino" was soon acclaimed by audiences as "as fair a specimen of Albinage as any ever witness'd." After shows in Albany and New Haven, however, his career quickly dissipated, perhaps by choice.<sup>216</sup>

Other people who performed albinism following Hervey's tour did so under the management of parents and showmen, and thus were usually unable to profit from their labors. Once Hervey left Washington, DC, for example, "poor parents residing in F street" publicly presented their daughter, whose eyes had "the same tremulous motion" but whose "skin [was]

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<sup>216</sup> "Communication," *The New-York Columbian* (NY), May 18, 1818; "The Albino Presents his compliments," *The New-York Columbian*, May 18, 1818; "An Albino," *Hallowell Gazette* (ME), May 27, 1818; "The Albino," *Connecticut Herald* (New Haven), June 16, 1818.

somewhat fairer” than the Albiness’s. In addition, in New York City, a man named Dr. Witmore used Hervey’s popularity to advertise his exhibition of two children of “the Albino variety” to “physiologists,” physicians, and all those who “desire of rational curiosity.” Many disabled artists and performers used their surprising depictions of bodily impairment and artistic labor to pursue lucrative and successful careers, but others found these opportunities out of reach or were unable to exploit them for their own gain.<sup>217</sup>

The challenges of working as an autonomous disabled artist or performer are particularly evident in the experiences of Paulina Snyder, an embroiderer, painter, and paper-cutter who was born of smaller stature, without arms, and with atypical legs in Maysville, KY in about 1809. Like other disabled artists, Snyder began her career by performing her needlework, paintings, cuttings, and watch-papers, as well as her atypical physique, to audiences from New York to Indiana and Louisiana with the assistance of a family friend. After about three years of conducting shows in rented rooms and boarding houses and “obtaining money for her support,” however, newspapers reported that she was kidnapped by three “scoundrels,” two who belonged to “some circus company” and another “named Dickason, a player upon the clarionet.” According to these notices, in late 1829, these men traveled with Snyder throughout Pennsylvania, managing her shows and taking shares of her profits. Then, when they “arrived in Harrisburg, they

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<sup>217</sup> “There is in Washington a native Albiness,” *National Messenger* (Washington, DC), July 15, 1818; “Native Albino Children of New-York,” *The New-York Columbian*, February 3, 1818. People also exhibited animals with albinism in the wake of Hervey’s tour, see: “Albinoes,” *Richmond Enquirer* (VA), June 2, 1818; “The Albiness, &c,” *Portsmouth Oracle* (NH), October 13, 1818; “Natural Curiosity,” *Salem Gazette* (MA), June 8, 1832.

collected all they could and absconded—leaving Paulina in the hands of strangers, without a penny of money.” Lacking the finances to arrange and advertise her own exhibitions, Snyder soon obtained employment with another showman, Walter B. Wright, who orchestrated her travels and performances throughout the southeastern United States in exchange for a portion of her profits. In 1835, Snyder gave Wright even greater control over her earnings by marrying him in Montgomery, AL.<sup>218</sup>

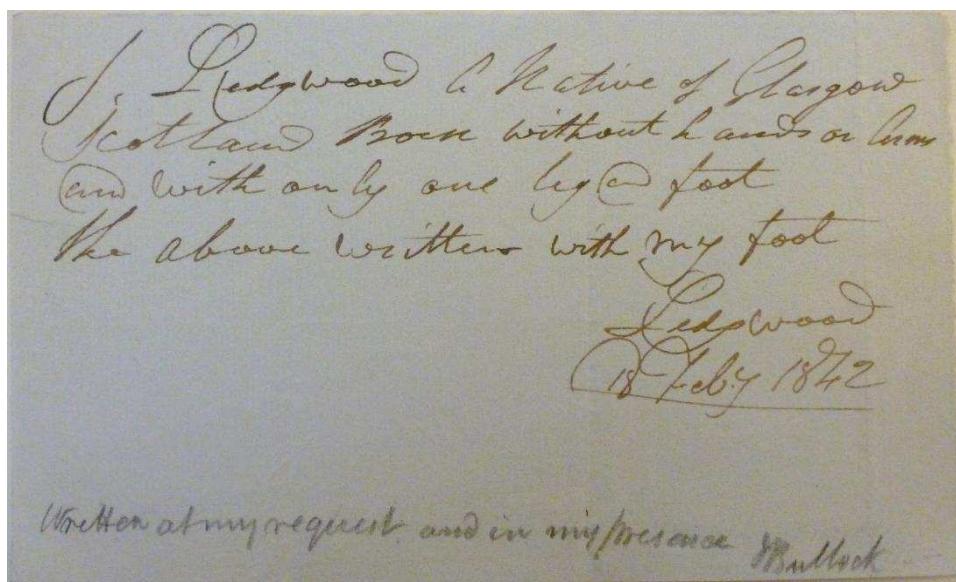
Some disabled artists resisted impositions from those who intended to profit from their work. Such was the case with Ledgwood, a Scottish performer who displayed dexterous tasks and his anomalous body, which lacked arms and one leg, to audiences throughout the United Kingdom. As a man with considerable earnings, Ledgwood was able to use the legal system to defend his professional and personal independence. Beginning in 1820, Ledgwood conducted exhibitions of his impairments and skills in, as he advertised, “all the acquirements of Art and Education,” which included pen-making and calligraphy as well as everyday tasks, such as shaving and serving tea [Figure 13]. In 1862, however, as he later testified at the Southampton Police Court, Thomas Haven, his assistant who had traveled with him and attended him at shows for the previous three weeks, stole seven shillings from the room where they both lodged. As Ledgwood explained to the Court, he had confronted Haven about the theft and Haven had responded that he had lost

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<sup>218</sup> “Scoundrels,” *Baltimore Patriot*, February 19, 1830; “Married... Marriage Extraordinary,” *New-Bedford Mercury* (MA), June 19, 1835. Also see: “Miss Paulina Snyder,” *Providence Patriot & Columbian Phenix*, October 31, 1829; “Another Prodigy,” *New-Hampshire Sentinel* (Keene), January 22, 1830; “The Lexington (Ky.) Gazette notices the exhibition...” *Southern Patriot* (Charleston, SC), May 30, 1833.

Figure 13: James Ledgwood. Handwriting Sample. 1842. Paper, Ink.

Houghton Library, Harvard University, Cambridge, MA.



the money, after which he “tried to make his escape by getting over the walls of the adjoining houses.” Ultimately, the presiding magistrates found the case in Ledgwood’s favor after Haven confessed that “he took the money and got into bad company and lost it” and that Ledgwood “was a very kind master indeed to him, and he had always used him well.” Haven was sentenced to “six weeks’ imprisonment with hard labour,” while Ledgwood resumed his performances, traveling to Ringwood by rail the next day.<sup>219</sup>

Working by displaying one’s unusual body and skills was undeniably difficult and risky. Disabled artists and performers struggled to arrange their own shows, attract patrons, and, perhaps most importantly, retain their personal, professional, and financial autonomy. Despite these challenges, many attained considerable success in this burgeoning industry. A look at their lives and careers would not be complete without a return to Nellis, who presented his impairments and capacity for artistic labor so compellingly to spectators in North and South America, the Caribbean, and Europe for thirty-seven years. Following Nellis’ shows in Philadelphia, for which he composed his playbill [Figures 3 and 4], he worked for four years at Barnum’s Traveling Menagerie and Museum, journeying and performing from Wisconsin to Washington, DC. Then, in 1854, he resumed his own self-directed and -

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<sup>219</sup> “The following description of a deformed person...” *The New-York Evening Post* (NY), November 2, 1820; “A Prodigy,” *The Sheffield Independent, and Yorkshire and Derbyshire Advertiser* (Sheffield, England), December 20, 1828; “By Permission. Extraordinary and Novel Exhibition,” *The Aberdeen Journal* (Scotland), December 9, 1929; “A Novel Scene at the Police Court,” *The Hampshire Advertiser* (Southampton, England), June 21, 1862. Also see: “Wonders! Wonders!! Wonders!!! Will Never Cease,” *The Blackburn Standard* (England), January 9, 1839; “Extraordinary Novelty” and “Mr. Ledgwood,” *The Blackburn Standard*, January 16, 1839; and two undated signatures of Ledgwood in “Human Curiosity Prints, Playbills, Broadsides, and Other Printed Material, 1695-1937,” Houghton Library, Harvard University, Cambridge, MA.

managed exhibitions, traveling initially throughout the United States and then in South America and the Caribbean. Leaving his wife Eliza at their home in Providence, RI, Nellis voyaged to perform in Cuba in 1859, Panama in 1863, Chile in 1864, and Bolivia in 1865, where he passed away that December. In these many locations, he attracted customers by demonstrating how his physical impairments enabled and enhanced his artistic work, a representation that diametrically opposed emerging bureaucratic and institutional constructions of disability that aligned bodily and laboring incapacity.<sup>220</sup>

### *Showmen and Physicians*

Over the course of the early nineteenth century, the American entertainment industry and, in particular, the market for viewing people with anomalous bodies became increasingly organized and institutionalized. When Honeywell and Rogers began performing in 1798 and 1806 respectively, they conducted shows at a few museums, such as the Columbian Museum in Boston and Gardiner Baker's American Museum in New York City. However,

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<sup>220</sup> "Barnum's Exhibition," *Milwaukee Daily Sentinel* (WI), July 29, 1853; "P. T. Barnum's Grand Colossal Museum and Menagerie," *Daily National Intelligencer* (Washington, DC), September 8, 1854. Nellis traveled in the United States from 1854-1859; for example, see: "Floating Palace Museum," *The Daily Picayune* (New Orleans, LA), January 22, 1856; "Novel Entertainment!" *New-London Daily Star* (CT), June 8, 1858. "El hombre sin brazos," *Diario de la Marina* (Havana, Cuba), February 19, 1859; "S. K. G. Nellis," Havana to New York City, May 10, 1859, *New York Passenger Lists, 1820-1957*, Ancestry.com; "Saunders K G Nellis, Artiste (Without Arms)," Providence City Directory 1854, 1860-1862, *U. S. City Directories, 1822-1989*, Ancestry.com; "El hombre sin brazos," *Panama Star and Herald* (Panama City), January 13, 1863; "Acrobatas," *El Mercurio* (Valparaíso, Chile), March 3, 1864; "S. K. G. Nellis," *Panama Star and Herald*, April 28, 1866; "Saunders K G Nellis," Rhode Island Wills and Probate Records, May 7, 1867, Case A 18485, Probate Files, A 18433-A18632, *Rhode Island, Wills and Probate Records, 1582-1932*, Ancestry.com.

most of the towns and cities they visited lacked such establishments, leaving them with little choice but to arrange for their own exhibitions in taverns, rented rooms, and boarding houses, as they did in Charleston, SC. After the turn of the nineteenth century, the number of museums, sideshows, and theater troupes—which boasted collections of biological, ethnological, and historical artifacts as well as live performances by artists, entertainers, and “human curiosities,” or people with atypical physiques—expanded rapidly. In 1814, Rembrandt Peale drew on the success of his father Charles Willson Peale’s Philadelphia Museum to found a similar institution in Baltimore. In 1825, his brother Rubens did the same in New York City, where he competed for customers with the American Museum, then under the direction of Cornelius Bogert, and the New York Spectaculum, which had been recently opened by John Scudder, Jr. In addition, in 1820, Daniel Drake, a doctor known as the “Ben Franklin of the West,” established the Western Museum in Cincinnati, which became famous for its “Chamber of Horrors.” Consonant with these institutions’ missions of presenting natural and scientific novelties, many began to hire disabled artists and performers to exhibit their impairments and artistic talents to patrons.<sup>221</sup>

Perhaps the most famous and successful museum of the period was Barnum’s American Museum [Figure 14]. In 1841, Barnum purchased the institution, which was located in the heart of New York City, from John

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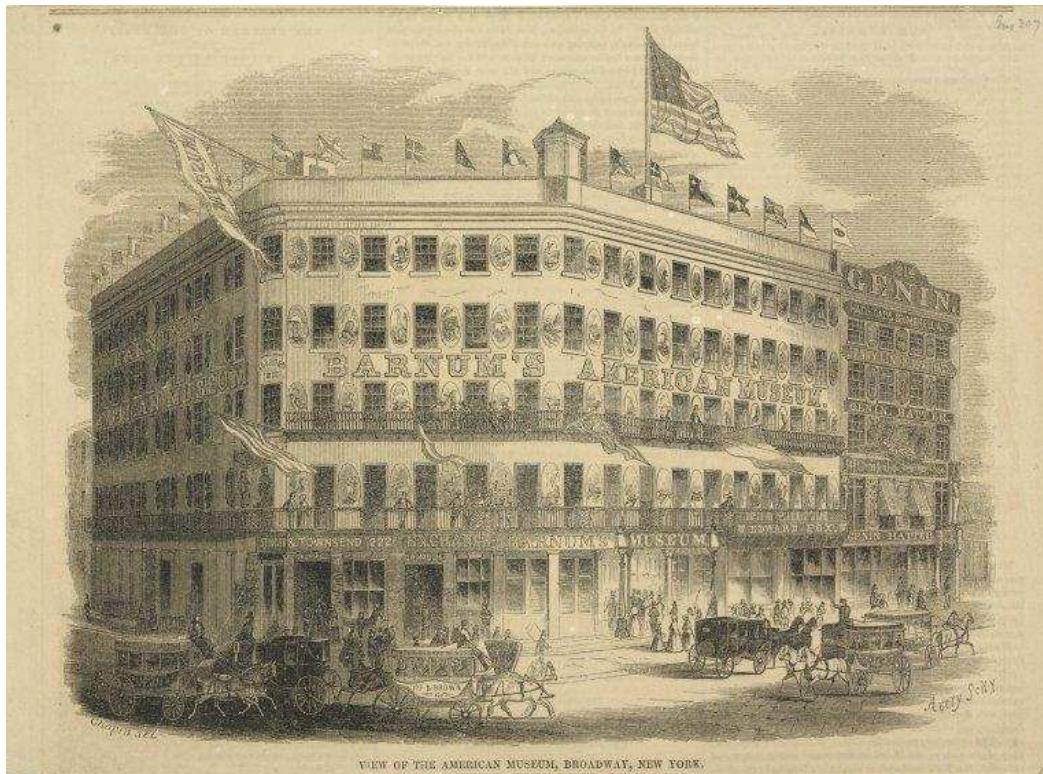
<sup>221</sup> Dennett, *Weird & Wonderful*, ch. 1; Bogdan, *Freak Show*, ch. 2; Lewis, *From Traveling Show to Vaudeville*. For more on the Peale Museums, see footnote 1. For more on the Western Museum, see: Theo Padnos, “Here is a cabinet of great curiosities’: Collecting the past on the American frontier” (Ph.D. Dissertation, University of Massachusetts, Amherst, 2000).

Scudder, Jr., who had been struggling to attract visitors, appease the museum's trustees, and, most importantly, turn a profit. Barnum's skills in publicity and entertainment almost immediately transformed the establishment into a commercial success. In his first year as owner and manager, the museum earned \$28,000, which was \$17,000 more than the previous year. By the late 1840s, it boasted a collection of 600,000 artifacts and was attended by more than 400,000 people annually. In addition, between 1842 and 1865, when the museum was destroyed by fire, it sold approximately 30 million tickets. Like other institutions of the period, Barnum's American Museum was centered on the exhibition of "human curiosities" and many disabled artists and performers who had previously conducted shows independently came to work there for periods of time. Nellis exhibited at the American Museum from 1841-1845 and in Barnum's Traveling Menagerie and Museum from 1851-1854. Honeywell was also employed at the Peale's museums in Baltimore and New York just before they were purchased and consolidated by Barnum. By the mid-nineteenth century, Barnum's enormous wealth and popularity had made him a primary employer of disabled artists and performers, who struggled to maintain their autonomy in this rapidly growing industry.<sup>222</sup>

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<sup>222</sup> Dennett, *Weird & Wonderful*, ch. 1; "Barnum's Exhibition," *Milwaukee Daily Sentinel*, July 29, 1853; "P. T. Barnum's Grand Colossal Museum and Menagerie," *Daily National Intelligencer*, September 8, 1854; "Miss Martha Honeywell," *Freedom's Journal* (New York, NY), August 29, 1828; "Peale's Museum," *Baltimore Patriot* (MD), October 25, 1828. For more on Barnum, see: Neil Harris, *Humbug: The Art of P. T. Barnum* (Boston and Toronto: Little, Brown and Company, 1973); Bluford Adams, *E Pluribus Barnum: The Great Showman and the Making of U.S. Popular Culture* (Minneapolis: University of Minnesota Press, 1997); James W. Cook, *The Arts of Deception: Playing with Fraud in the Age of Barnum* (Cambridge and London: Harvard University Press, 2001); James W. Cook, ed. *The Colossal P. T. Barnum Reader* (Urbana and Chicago: University of Illinois Press, 2005).

Figure 14: John Reuben Chapin. "View of the American Museum, Broadway, New York." Engraved by Samuel Avery. Unknown Date. The Miriam and Ira D. Wallach Division of Art, Prints and Photographs: Print Collection, The New York Public Library, NY. NYPL Digital Collections. Accessed March 30, 2016.



Museum managers, such as Barnum, used their financial, commercial, and medical resources to gain control over the industry for the performance of atypical physical impairment and capacity. Their capital and connections allowed them to out compete disabled artists working independently in numerous ways. Showmen hired multiple artists and performers to exhibit at one time, enticing audiences with the promise of several acts for the price of one ticket. They coupled live performances with other attractions, such as exotic animals and rare gems, to appeal to a broad spectrum of viewers. In addition, museum operators financed massive advertising campaigns, complete with “gigantic posters and colored inks,” which overshadowed the modest newspaper notices published by autonomous artists.<sup>223</sup>

Showmen also came to dominate the market for the performance of dis/ability by forming relationships with physicians. When disabled artists displayed their capacities and incapacities to customers, most responded with wonder and praise; however, many also expressed disbelief, incredulity that their impairments could coexist with and even facilitate their artwork. Museum and sideshow managers attempted to resolve such sentiments by incorporating medical opinion into their advertisements and exhibitions. This expert testimony not only lent credibility, visibility, and status to their institutions, which disabled artists working independently struggled to match, but it also served to explain and authenticate these artists’ bodies and skills in ways that patrons increasingly found compelling. As a result, the attendance and profits of museums soared and disabled artists and performers were left

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<sup>223</sup> Barnum’s obituary, *New York Herald*, April 7, 1891, quoted in Dennett, *Weird & Wonderful*, 27.

with little choice but to join these establishments and settle for a share of the proceeds.<sup>224</sup>

Medical interest in disabled artists and performers did not begin when showmen began to collaborate with physicians in the mid-nineteenth century. Instead, doctors had long desired to study people with congenital physical impairments, which most of these artists experienced. During the late eighteenth and early nineteenth centuries, a number of factors also combined to make such research a priority. While doctors had previously interpreted congenital physical anomalies as evidence of evil omens, witchcraft, or parents' wrongdoings, many now suggested that individuals with these conditions were simply outliers in God's "great order of creatures" and thus legitimate and significant subjects of scientific study. As such, prominent physicians became involved in the discipline of teratology, which focused on the classification of human "monsters," and sought cases for examination and experimentation. They turned to disabled artists and performers in particular because these individuals willingly and publicly displayed their bodies. During this period, the professionalization of medicine in America was in its early stages and doctors struggled to gain access to human subjects for research. Most people, including those with various impairments, rarely sought medical attention and many states outlawed the trade in cadavers, which doctors desired for their studies. In this context, performances by disabled artists became important objects of scientific and medical investigation, and

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<sup>224</sup> For more on the relationship between showmen, physicians, and scientists, see: Bogdan, *Freak Show*; Paul Youngquist, *Monstrosities: Bodies and British Romanticism* (Minneapolis: University of Minnesota Press, 2003); Nigel Rothfels, "Aztecs, Aborigines, and Ape-People: Science and Freaks in Germany, 1850-1900," in *Freakery*, ed. Garland Thomson, 158-173.

physicians readily attended these shows to examine and even experiment on their subjects.<sup>225</sup>

Doctors were primarily interested in the causes of these artists' impairments. In some cases, their observations led them to suggest that such conditions were hereditary. A contributor to the *Boston Medical and Surgical Journal*, for example, described the "peculiar control" that Nellis had "over the muscles of the mouth" and concluded that his armless descendants would have highly evolved facial muscles, perhaps "lips [that] take the form of a proboscis!" Other physicians suggested that these artists' physical irregularities were the product of damaging environmental conditions. Citing experiments in which "detaining tadpoles in darkness...caus[ed] them to grow into gigantic and monstrous *tadpoles*," a columnist in the *London Medical Gazette* reasoned that Ducomet lacked arms and hands because his mother was not exposed to enough light during her pregnancy. "The want of light producing malformed births, is so notorious," the author claimed, "that the magistrates of Lille [where Ducomet was born] have issued strict orders to prohibit the poor from taking up...in certain dark caverns." Still other doctors understood disabled artists' conditions as random biological occurrences. Doctor Felix Pascalis, for example, challenged the widely-held notion that albinism only occurred in "crossed breeds of the human race" after visiting Hervey's show. As he wrote in a letter to Doctor Thomas Duche Mitchell, "you

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<sup>225</sup> Bogdan, *Freak Show*, 27. For teratology and monstrosity, see: Laura Lunger Knoppers, *Monstrous Bodies / Political Monstrosities in Early Modern Europe* (Ithaca: Cornell University Press, 2004); Youngquist, *Monstrosities*; Carrie Yang Costello, "Teratology: 'Monsters' and the Professionalization of Obstetrics," *Journal of Historical Sociology* 19, 1 (March 2006). For more on medical professionalization and its limits, see: footnote 16.

will have an opportunity of ascertaining, as I have done, that there is not any mixture of blood or *color* in this person." "Why [albinism] should not take place, although rarely, in our own white species," Pascalis declared, "sound philosophy could not certainly contend against."<sup>226</sup>

Like audience members, physicians also focused on the unexpected relationship between disabled artists' physical incapacities and artistic and laboring capacities, for which they advanced numerous explanations. The writer to the *Boston Medical and Surgical Journal* who discussed Nellis, for instance, postulated that he had acquired his artistic skills because of two laws of nature: the first of desire and the second of necessity. According to the former, Nellis so wanted to produce his art and perform his daily tasks that his muscles and body parts had adapted accordingly. As the author explained, this was observable in the way that Nellis' facial muscles had developed to hold his hat and throw it off at will. The law of necessity, though similar, positioned Nellis' capabilities as products of need rather than want. Noting how his eyes had accustomed to viewing his "delicate cuttings in paper" at the distance of his toes, the contributor concluded that "nature accommodated the organ to the circumstances of the individual."<sup>227</sup>

Another popular medical explanation for disabled artists' bodies and skills was the notion of compensation. According to this line of reasoning,

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<sup>226</sup> "Malformation of the Shoulders," *Boston Medical and Surgical Journal*, reprinted in *The Western Journal of Medicine and Surgery* 5, 6 (June 1842), 451; "Effects of Darkness in Producing Deformities," *London Medical Gazette*, reprinted in *Transylvania Journal of Medicine and the Associate Sciences* 5, 4 (Oct-Dec 1832), 593; "The Albinism," *American Daily Advertiser*, reprinted in *The National Register*, June 6, 1818.

<sup>227</sup> "Malformation of the Shoulders," *Boston Medical and Surgical Journal*, reprinted in *The Western Journal of Medicine and Surgery*, 451.

Providence or nature had given these artists their creative and laboring capacities as recompense for their impairments. "To make amends," Doctor M. J. Geraldes stated in a lecture on Ducornet, "the feet acquired (the result of long usage,) an astonishing suppleness, and the toes supplied the place of the fingers with admirable perfection." "We would imagine that such a deformity entails on the person who is thus afflicted an absolute impotence to perform work of the most ordinary kind," Geraldes continued. "Nevertheless it is not so." During the early nineteenth century, physicians worked with increasing intensity to document, explain, and evaluate how and why disabled artists' physical impairments had not hindered their artistic labors and even seemed to enhance them.<sup>228</sup>

Customers who visited or read about disabled artists found doctors' explanations of their bodies and skills to be compelling, especially so towards the mid-nineteenth century. Captivated but confused about how these artists' seemingly incapable bodies facilitated their artwork, patrons turned to physicians, who were gaining authority as experts on such matters. Medical writings about disabled artists regularly appeared in newspapers and popular magazines. Pascalis' letter to Mitchell about Hervey, for example, was published by the *American Daily Advertiser*, reprinted in *The National*

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<sup>228</sup> M. J. Geraldes, "Clinical Lectures on the Surgical Diseases of Children, Lecture III, Malformations of the Superior Extremities," *Medical and Surgical Reporter* 23, 24 (Dec 10 1870), 465. Compensatory conceptions of disability have endured from the middle ages to modern day; see: Julie Singer, "Playing by Ear: Compensation, Reclamation, and Prosthesis in Fourteenth-Century Song," in *Disability in the Middle Ages*, ed. Joshua R. Eyler (Surrey, England and Burlington, VT: Ashgate Publishing, 2010), 39-53; Rosemarie Garland Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1997), 49-51. For a mid-nineteenth-century perspective on compensation, see: Ralph Waldo Emerson, "Essay on Compensation," 1841, in Lewis Nathaniel Chase, *Emerson's Essay on Compensation* (Sewanee, TN: The University Press, 1906).

*Register*, and then quoted by numerous publications. Newspaper editors also often appended disabled artists' advertisements with accounts of medical research about their physical conditions. While Hervey was in Boston, for instance, the *Intelligencer* noted that a surgeon in Milan had observed a woman with seven sons, three of whom "had white skins, white hair, and red eyes." Similarly, when Hervey traveled to New York City, the local *Weekly Visitor* published the findings of M. Blumenbach, a professor at the University of Gottingen, who had determined that her red eyes were caused by a "total privation of that brown or blackish mucus that covers all the interior parts of the eye in its sound state." Consumers who struggled to reconcile the capacities and incapacities of disabled artists welcomed information from those they came to view as professionals. As such, physicians' reports about these artists circulated widely in academic and popular circles, lending clarity and credibility to their unusual displays of dis/ability.<sup>229</sup>

Showmen soon recognized the value of physicians' statements to customers and incorporated them into their advertisements and exhibitions. When Nellis performed at Jonathan Harrington's museum in Boston in 1842, for example, Harrington accompanied a notice describing his show with a report from Doctor Jerome Van Crowninshield Smith, which explained that Nellis' "extraordinary capabilities" were "evidence in the long chain of proofs" that "certain muscles, when regularly trained" can perform "vicarious labor." Harrington may also have featured Smith's testimony to demonstrate the

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<sup>229</sup> "The Albiness," *American Daily Advertiser*, reprinted in *The National Register*, June 6, 1818; "The Beautiful Albiness," *Boston Intelligencer, and Morning & Evening Advertiser*, September 20, 1817; "The Albiness," *The Weekly Visitor, and Ladies' Museum* (New York, NY), January 3, 1818.

propriety of Nellis' exhibition and his museum more generally. As Smith wrote, Nellis' performances of his body were "perfectly justifiable, since there [was] no other mode by which he could procure the necessities of life." Furthermore, Smith held, Nellis worked "far more industriously than some make-weights in society, since he earn[ed] his own living." Two years later, Moses Kimball, a friend of Barnum's and proprietor of the Boston Museum, also appended his advertisement for "four albino negro boys" with testimonies from physicians. Below Kimball's claims of "ENTERTAINMENT!" and "INSTRUMENTAL MUSIC, SINGING AND DANCING!" Doctors Nathaniel B. Shurtleff and S. E. Abbot authorized that the performers were "incontestably of true negro parentage" with "pearly white skin, white hair, and pink pupils of the eyes."<sup>230</sup>

Showmen also integrated medical research and writings into their exhibitions. Statements from doctors were featured in books and other paraphernalia sold during shows. "True-life booklets"—which often accompanied the performances of disabled artists and other "human curiosities" and described, usually in exaggerated or falsified fashion, their bodies, backgrounds, and skills—regularly included quotations from physicians. Smith, who had previously examined Nellis, for example, was quoted in a pamphlet sold at the show of Charles Sherwood Stratton, who

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<sup>230</sup> Harrington's Museum was short-lived. According to *Dearborn's Reminiscences of Boston, And Guide Through the City and Environs*, Harrington, a ventriloquist, "established a Museum in the rooms previously occupied as the New England Museum, on Court Street, with the principal part of a Philadelphia Museum, in the year 1840...but failing to meet with a suitable support, was sold...in 1842." Nathaniel Dearborn, *Dearborn's Reminiscences of Boston, And Guide Through the City and Environs* (Boston: Nathaniel Dearborn, 1851), 81. "The Man Without Arms," *The Liberator* (Boston, MA), May 13, 1842; "Mr. Nellis," *Boston Evening Transcript*, April 25, 1842 and May 6, 1842; "Novel Concert by the Four Snow White Negro Boys!" (Boston, 1844).

famously performed at Barnum's American Museum as General Tom Thumb. Some museum operators even provided doctors with special access to disabled artists and performers. Robert Hunter—the Scottish merchant who initially managed the exhibitions of Chang and Eng Bunker, who were Siamese Twins—hosted events for the medical communities in London, Boston, and New York. At these occasions, physicians had the opportunity to privately but collaboratively examine the Bunkers outside of regular admission hours.<sup>231</sup>

In addition, Hunter accommodated experts who wanted to conduct experiments on the Bunkers. He gave Doctor Joseph Skey, Surgeon General to the British Army, access to the Bunker's bedroom on three subsequent nights so that he could chronicle their sleeping patterns. Hunter also permitted Doctor George Buckley Bolton, a member of the British Royal College of Surgeons, to give Chang, but not Eng, asparagus, observe both men's urine, and repeat the experiment the following day. Museum and sideshow managers recognized that physicians' testimonies held value to consumers and enhanced the status, legitimacy, and visibility of their institutions more generally. Unlike independent disabled artists, they developed close partnerships with these emerging professionals, using their authority on matters of impairment and capacity to boost their attendance and sales.<sup>232</sup>

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<sup>231</sup> *Sketch of the Life, Personal Appearance, Character, and Manners of Charles S. Stratton, the Man in Miniature, Known as General Tom Thumb* (New York: Van Norden, 1854), quoted in Bogdan, *Freak Show*, 151; George Buckley Bolton, "Statement of the principal circumstances respecting the united Siamese Twins now exhibiting in London," *Philosophical Transactions of the Royal Society of London* 120 (1830).

<sup>232</sup> Bolton, "Statement of the principal circumstances respecting the united Siamese Twins now exhibiting in London," 184, 187.

The collaboration between showmen and physicians was one important way that museums and sideshows came to displace disabled artists and performers who conducted their own exhibitions and managed their own earnings. Drawing on doctors' growing power and influence, showmen heightened the popularity and prestige of their institutions and amplified their profits. The partnership between showmen and physicians also benefited the medical community. Doctors gained access to unique human bodies for examination and experimentation. In addition, by being presented and treated by showmen as experts, they obtained the opportunity to demonstrate and authenticate their professional standing to the public. Ultimately, showmen's relationships with physicians, as well as their considerable financial and commercial resources, allowed them to take control of the market for the performance of atypical physical impairment and ability by the mid-nineteenth century. As such, nearly all disabled artists and performers came to operate exclusively out of museums and sideshows. Another consequence of this development was the fading of disabled artists' alternative depictions of impairment. Interpreting their physical conditions as undesirable medical anomalies, doctors undermined the notion that bodily incapacity might positively influence artistic labor.<sup>233</sup>

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<sup>233</sup> Bogdan discusses the "aggrandized" mode of presentation in freak shows in which performers were depicted as accomplished and talented with high social status or alternatively as respectable and capable of completing tasks that seemed difficult on account of their impairments. These presentation styles seem to emphasize the performers' capacities, thus aligning with earlier enabling displays of impairment. Nevertheless, "aggrandized" presentations relied on fictitious information (performers did not have the social status they claimed, for example) and, more importantly, were formulated by and profited on by showmen and museum managers, not the performers. Therefore, it was only a mirage of an enabling conception of impairment that persisted into the freak show era. Performers' inability to independently profit from their work rendered it false. Bogdan, *Freak Show*; Bogdan, "The Social Construction of Freaks," in Garland Thomson, ed., *Freakery*, 23-28.

Although some scholars have proposed that disabled artists' absorption into museums and sideshows gave them greater security and community, they also lost much in this transition. Robert Bogdan, a scholar of freak shows, for example, has argued that integration into museums allowed disabled artists to develop a "community or culture of showpeople" that had "the permanence [of] an organizational base." Rather than "float[ing] precariously, without roots," he writes, they "joined a segment of society that was in the process of developing a way of life apart from the mainstream." Nevertheless, there were drawbacks to disabled artists' new positions of employment. They struggled more to solely manage and profit from their artwork, becoming subject to the wishes of museum operators who almost invariably took shares of their proceeds. Even more, incorporation into museums took from disabled artists the very thing that had so attracted customers to their shows in the first place: their capacity for autonomous, economically productive labor. No longer able to exclusively manage and benefit from their surprising demonstrations of impairment and artistic skill, their performances came to be defined by their physical limitations, which were increasingly interpreted through a medical lens. As such, patrons now focused on these artists' physical incapacities, rather than the extraordinary creative and commercial talents—and empowering and enabling depictions of impairment—that had sparked their careers.<sup>234</sup>

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<sup>234</sup> Bogdan, *Freak Show*, 30. Susan Schweik has studied the largely independent and self-constructed career of a mid-to-late-nineteenth-century disabled performer in "Marshall P. Wilder and Disability Performance History," *Disability Studies Quarterly* 30, 3/4 (2010).

Disabled artists and performers used new opportunities in the early nineteenth-century marketplace to advance understandings of impairment that challenged emerging bureaucratic, legal, and institutional constructions of disability rooted in the inability to labor. Demonstrating how their physical limitations did not disrupt and even enhanced their artistic work, these artists fascinated consumers and turned a profit. The increasing growth and organization of the entertainment industry, however, made it harder for disabled artists to operate autonomously. Showmen and museum managers used their commercial and financial capabilities—as well as their partnerships with physicians, who explained disabled artists' bodies and skills in ways that patrons found convincing—to gain control over the market for the performance of dis/ability, hiring disabled artists at their establishments and taking shares of their proceeds. Although some artists and performers, such as Nellis, sustained independent careers into the mid-nineteenth century, most did not—their enabling displays of impairment disappearing alongside their personal and professional autonomy.

## Chapter 7: Technologies to Accommodate Impairment and their Producers

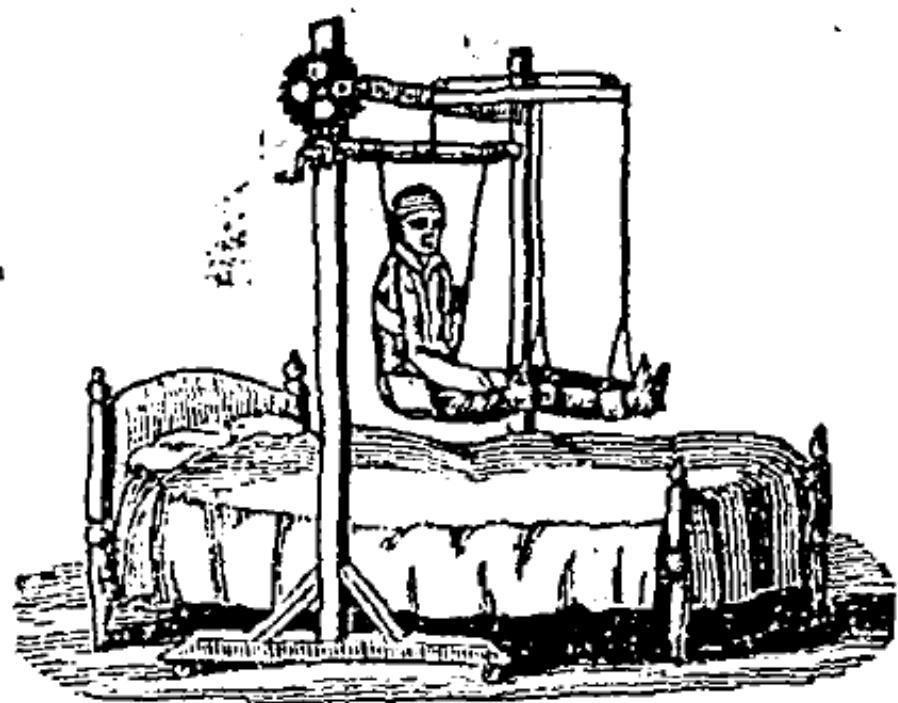
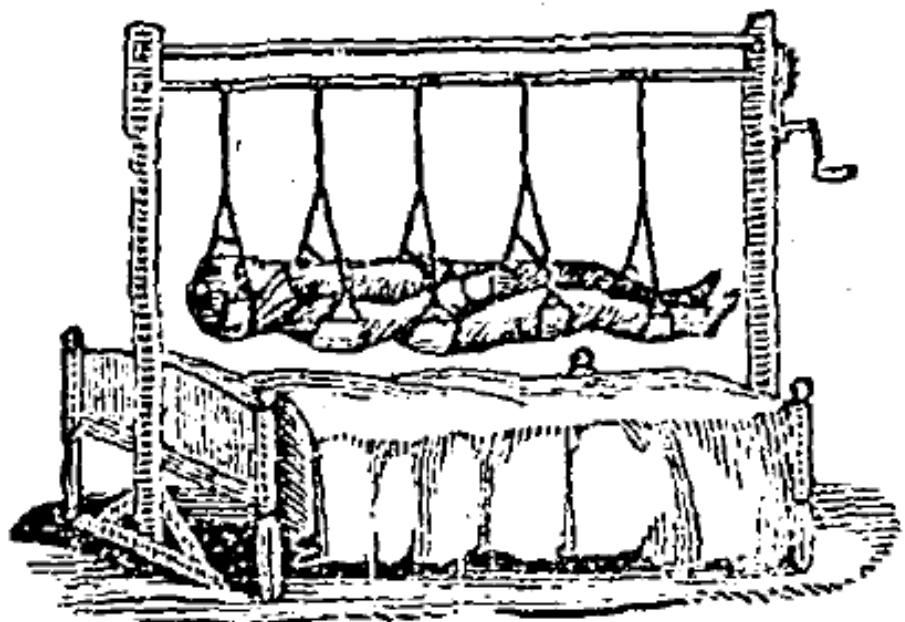
In January 1825, R. T., a wealthy and corpulent woman from Lynn, MA, slipped on ice and broke her right thigh bone. Her injury was severe, but after her physician, John Lummus, reset her fracture and family members tended to her wounds, she seemed to improve rapidly. That was, until two weeks later when caretakers discovered that pressure from her back and hips had caused inflammation and gangrene, which was spreading across her back, hips, and thigh. R. T. and her family summoned Lummus, along with another “eminent surgeon,” but both doctors pronounced her “rapidly sinking” with “a faint prospect of her recovery.” As Lummus later explained, “the state of the fractured limb, the size of the patient, and the nervous excitement under which she labored, precluded or rendered extremely inconvenient, the necessary dressing to those diseased parts.”<sup>235</sup>

Fortunately for R. T., it was at this critical moment that John Charles Jenckes, the inventor of a machine he called the Alleviator, arrived in Lynn to peddle his apparatus [Figure 15]. Jenckes had developed this device three years prior when he, too, was confined to bed on account of a fractured and shattered leg. As he had advertised in the *Providence Gazette*, “to obtain some relief from the excruciating pain which he suffered when removed in the ordinary manner,” he had designed a contraption that allowed a bedridden person “to be raised with perfect ease to himself, and with little effort or labour on the part of attendants, to such a height and for such a time, as to give an opportunity for making the bed and changing the linen.” R. T. and her family

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<sup>235</sup> “Jenckes Patent Alleviator,” *Boston Medical Intelligencer*, June 27, 1826.

Figure 15: John Charles Jenckes. Alleviator. In "Jenckes' Patent Apparatus," *Boston Medical Intelligencer* 1, 4 (Jun 10, 1823), 13.



members purchased Jenckes' appliance in hopes that it would provide Lummus with greater access to her back and thigh and caretakers with the ability to change her dressings more frequently. According to Lummus, it facilitated a dramatic improvement. "I feel assured the patient's life has been preserved by the assistance of this apparatus," he declared.<sup>236</sup>

R. T. and Jenckes were two of many early nineteenth-century Americans who turned to the marketplace to purchase and produce technologies designed to accommodate or alleviate their impairments. Assistive devices—from crutches to bed rests and sick chairs—had been made and used during the colonial period; however, economic and cultural developments in the Early Republic created the context for a fast growing industry. Advancements in transportation and print culture gave producers greater access to customers in small towns and expanding cities. The Patent Act of 1790 provided inventors with exclusive rights to their designs at affordable prices, promoting industry. In addition, cultural perceptions of respectability and politeness began to embrace the use of technologies for shaping or altering the body, which had previously been viewed as evidence of dishonesty, impiety, and pride. As a result, the industry for appliances to accommodate impairment boomed. Consumers, such as R. T., enjoyed a multitude of new products to choose from, while inventors and retailers—many of whom, like Jenckes, had experienced periods of physical incapacity themselves—gained a growing market for their wares.<sup>237</sup>

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<sup>236</sup> Ibid; "Jenckes' Patent Apparatus," *Providence Gazette*, reprinted in *The New-England Journal of Medicine and Surgery, and Collateral Branches of Science* 13, 1 (Jan 1824), 112.

<sup>237</sup> For the patent system, see: B. Zorina Khan, *The Democratization of Invention: Patents and Copyrights in American Economic Development* (New York: Cambridge University Press,

This chapter explores the new commercial world of enabling technologies, focusing on inventors who used their own experiences with impairment to design and advertise products. It finds that, like disabled artists, the careers and contraptions of “disabled inventors”<sup>238</sup> advanced the notion that bodily ailments could be managed to preserve and enhance laboring capacity. Many inventors enjoyed commercial success, demonstrating to their patrons that the experience of affliction could aid innovation and profit. Additionally, the goods that these producers made and sold provided greater capability, laboring and otherwise, to their users. Some devices, such as Jenckes’ Alleviator, improved comfort and hastened healing. Others gave users greater mobility, control, independence, and the ability to resume work. These technologies and their creators and consumers operated alongside a culture of home production and adaptation—in which impaired users became inventors themselves—and within the larger healthcare economy.

Towards the mid-nineteenth century, however, disabled inventors found it increasingly difficult to participate in and profit from this industry. Perhaps most significantly, physicians came to dominate the production and purchase of assistive appliances. As a result, disabled inventors, who

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2005). For changing attitudes towards technologies for impairment and the body, see: David M. Turner and Alun Withey, “Technologies of the Body: Polite Consumption and the Correction of Deformity in Eighteenth-Century England,” *History: The Journal of the Historical Association* (2014), 775-796; Stephen Mihm, “A Limb Which Shall Be Presentable in Polite Society,” in *Artificial Parts, Practical Lives*, eds. Katherine Ott, David Serlin, and Stephen Mihm (New York and London: New York University Press, 2002), 282-300.

<sup>238</sup> As in the case of disabled artists, I use the phrase “disabled inventor” not to suggest that these individuals saw themselves as disabled, that their consumers viewed them as disabled, or that I consider them to be disabled. Instead, I simply invoke the term as shorthand for an inventor who used their own experiences with impairment to design, construct, and market assistive technologies.

generally lacked specialized medical knowledge, struggled to create items that could be successfully marketed to customers. Medical involvement in the industry also shaped the designs of accommodating devices. Rather than promoting the capabilities of their users, these contraptions came to prioritize the needs and desires of doctors and caretakers, sacrificing user comfort and autonomy for medical control and manageability.

Most scholars of technologies to accommodate impairment have focused on the late nineteenth and twentieth centuries. Those who examine earlier periods tend to emphasize the restrictive aspects of these devices, which, scholars argue, limited the independence of their users by requiring that comparatively ablebodied caretakers control their movement.<sup>239</sup> This chapter recovers a less explored period of technological development from roughly 1800 to the late 1830s in which inventors, many of whom experienced or had experienced physical incapacity, designed products to promote user comfort, capability, and autonomy. Sources for this study include hundreds of advertisements published by at least sixty inventors from 1787 to 1848.<sup>240</sup>

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<sup>239</sup> For scholarship suggesting that technologies for impairment developed during and before the mid-nineteenth century limited users' autonomy, see citations in Nicole Quakenbush, *Bodies in Culture, Culture in Bodies: Disability Narratives and a Rhetoric of Resistance* (Ph.D. Dissertation, The University of Arizona, 2008), 84. There has been recent interest in such products before the mid-nineteenth century in Europe and America; see: Turner and Withey, "Technologies of the Body," Liliane Hilaire-Prez and Christelle Rabier, "Self Machinery? Steel Trusses and the Management of Ruptures in Eighteenth-Century Europe," *Technology and Culture* 54 (2013), 460-502; Mihm, "A Limb Which Shall Be Presentable in Polite Society," and David Waldstreicher, "The Long Arm of Benjamin Franklin," in *Artificial Parts, Practical Lives*, ed. Ott, Serlin, and Mihm. Nicole Belolan is also currently completing a dissertation, titled "Navigating the World: The Material Culture of Physical Mobility Impairment in the Early American North, 1728-1861," in the History of American Civilization program at the University of Delaware.

<sup>240</sup> It is impossible to determine all the inventors who designed products based on their own experiences, but at least 15 of the 60 explicitly mentioned their own incapacities in their advertisements.

Approximately thirty reviews written by users have also been located in diaries, letters, and newspaper articles. More common are product assessments by mechanics and doctors in trade journals and by judges at agricultural and engineering fairs. Analyses of surviving objects, patent documents, inventors' account records, and genealogical research round out the study.<sup>241</sup> Taken together, these materials show how disabled inventors, like disabled artists, used the early nineteenth-century market economy to advance alternative, more enabling conceptions of impairment, which did not preclude and even facilitated labor, in the products they made and sold. The sources further document these inventors' diminishing commercial opportunities—and perhaps the waning of their distinct notions of incapacity—as doctors assumed control over the industry for such technologies.

### *Inventors and their Inventions*

Before R. T. and her family purchased Jenckes' Alleviator, they most likely weighed its advantages against a number of other devices for facilitating mobility, and for broken bones in particular, that were readily available in the Lynn, MA area. For instance, they may have considered Jonathan Elliott's Elevator, which could "be applied to any bed, for the purpose of raising a sick

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<sup>241</sup> The U. S. Patent Office burned in 1836, destroying the vast majority of patent records before this date. The Patent Act of 1837 authorized the reconstruction of these documents by permitting inventors who had previously received patents to submit original or certified copies of their designs to the Patent Office. Inventors were also allowed to file new patents by swearing under oath that their submissions conformed to their original inventions. As a result, copies of some patents prior to 1836 are available at the National Archives in Washington, DC. Also useful are listings of pre-1837 patents, which contain the titles of otherwise burned materials. The Directory of American Tool and Machinery Patents [<http://www.datamp.org/>] is a useful resource for this latter material. For more, see: Michael Risch, "America's First Patents," *Florida Law Review* 64, 5 (Oct, 2012), 1279-1336.

person with perfect ease” and was for sale in nearby Newburyport. They may also have examined the “sofa, easy, and lolling chairs” advertised by auctioneer T. Deland in neighboring Salem and the “bed chair,” which was often used for sick or injured people, at J. L. Cunningham’s store in Cambridge. If R. T.’s family members had been willing to travel the twelve miles to Boston, their selection of assistive contraptions would have expanded still. Perhaps at the top of their list would have been John Mead’s Jointed, Reclining, Valetudinary Cot-Chair, on Rockers, which was particularly suited for those with broken limbs because it transformed from a chair to a bed and thus reduced unnecessary locomotion [Figure 16].<sup>242</sup>

The considerable number of accommodating appliances available to R. T. and her family was not unusual. During the early nineteenth century, the market for these products flourished, with a diversity of items at a variety of price points and a wide range of producers and consumers looking to sell and buy wares. R. T. and her family could choose between these contraptions because of their affluence. Some devices—such as the easy chair “for the use of persons in weak and feeble health” made by Pittsfield, MA cabinetmaker Benjamin Franklin Hays—cost as much as one hundred dollars [Figure 17]. However, individuals from more modest backgrounds also had access to these technologies. Some pooled their resources and purchased products cooperatively, as the members of the Association of Mechanics and

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<sup>242</sup> “Patent Elevator,” *Newburyport Herald* (MA), March 8, 1811; “Genteel Furniture,” *Repertory* (Boston, MA), September 25, 1823; “Mead’s Patent Valetudinary Chair,” *Columbian Centinel* (Boston, MA), August 19, 1820; Julian P. Boyd, “Horatio Gates Spafford: Inventor, Author, Promoter of Democracy” (Worcester, MA: American Antiquarian Society, 1942), 315-316.

Figure 16: John Mead. Valetudinary Chair. Patented in 1817. In *Documents of the Senate of the State of New York, Vol. V—Nos. 50 to 76*. Albany, C. Van Benthuyzen & Sons, 1868. 112.

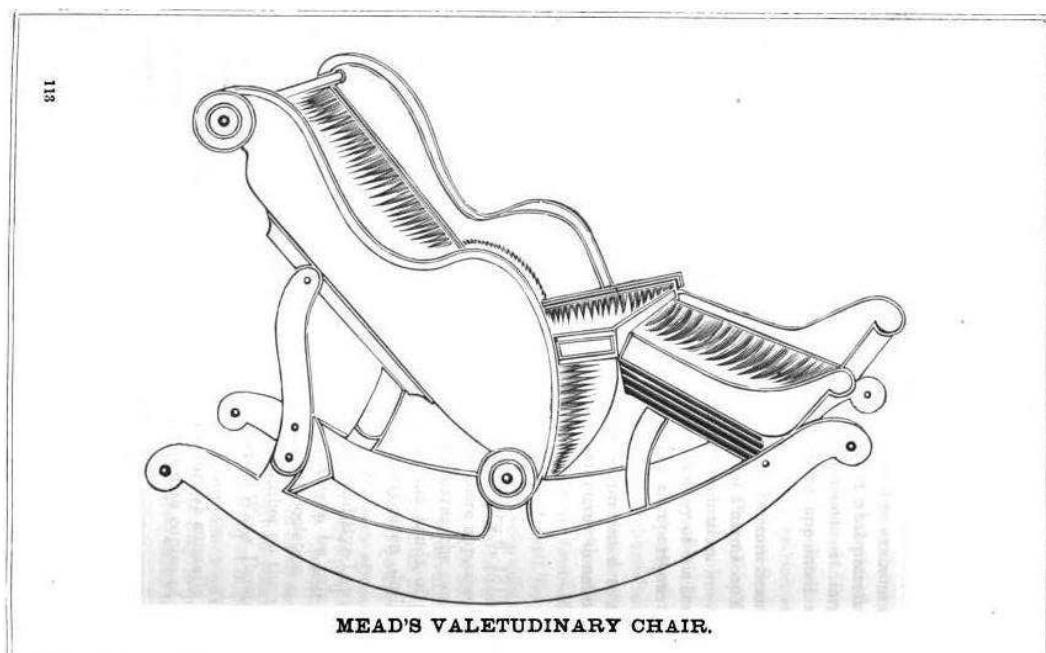
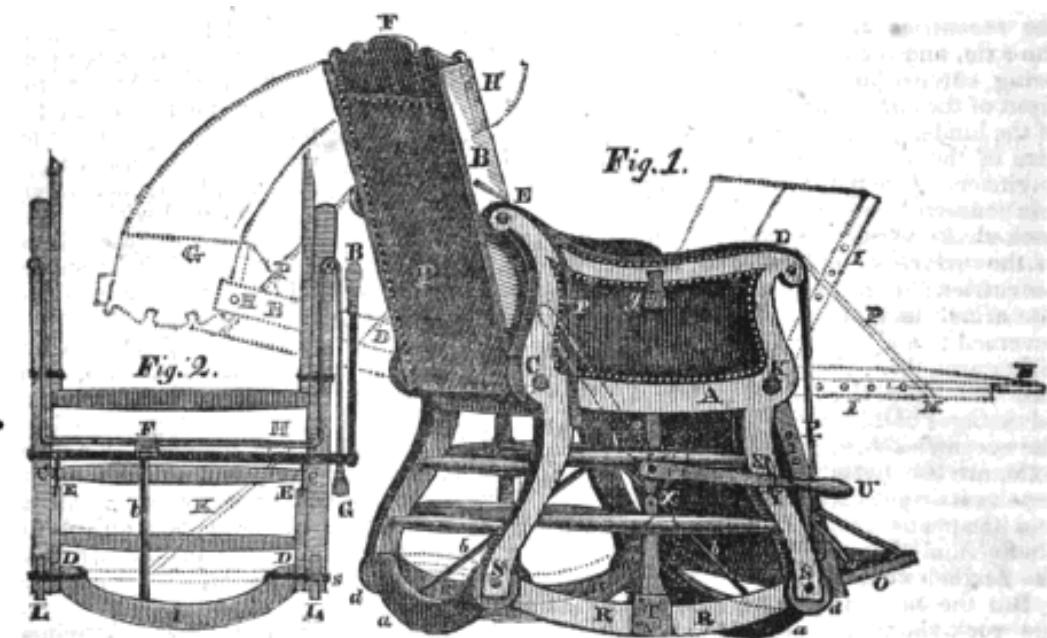


Figure 17: Benjamin Franklin Hays. Easy Chair. In "Hays' Easy Chair." *Mechanics' Magazine, and Register of Inventions and Improvements, Vol. V.* New York: D. K. Minor, 1835. 280.



Manufacturers in Providence, RI did to buy Jenckes' Alleviator in 1823. In other cases, inventors and retailers rented appliances to patrons for small fees; adopted variable pricing schemes, whereby amenities could be added or subtracted to adjust the overall cost; or simply charged less. Cabinetmaker Luke Houghton from Barre, MA, for example, sold three chairs "for sickness" for just \$2.75 and \$3 in 1829 and 1830.<sup>243</sup>

The booming industry for devices for impairment was fueled by political, economic, and cultural factors. Affordable patents and advancements in transportation, infrastructure, and print culture promoted industry of all kinds. Cultural changes were as important. Examining early modern England, David M. Turner and Alun Withy have argued that developing notions of politeness encouraged Britons to become increasingly receptive to technologies for the body over the course of the eighteenth century. While seventeenth- and early eighteenth-century individuals would not have criticized the use of functional items that facilitated economic productivity, such as wooden legs, many believed that it was sinful to change or alleviate corporeal conditions that God had willed. By the late eighteenth century, however, Britons came to believe that correcting physical defects and shaping

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<sup>243</sup> "Comfort for the Sick," *Patriot and Democrat* (Hartford, CT), June 4, 1836; "Hays' Easy Chair," *Mechanics' Magazine, and Register of Inventions and Improvements*, Vol. V (New York: D. K. Minor, 1835), 280-281; "Jenckes' Patent Apparatus," *The New-England Journal of Medicine and Surgery, and Collateral Branches of Science* 13, 1 (Jan 1824), 112. For example, Hays advertised that his easy chair could be "built for all prices from \$10 to \$100 according to the taste of the purchaser;" "Comfort for the Sick," *Patriot and Democrat*, June 4, 1836. Luke Houghton Account Book, Ledger A, 1816-1827, Barre MA, quoted in Nancy Goyne Evans, *American Windsor Furniture, Specialized Forms* (New York: Hudson Hills Press, in association with The Henry Francis du Pont Winterthur Museum, 1997), 88.

the body according to cultural ideals and expectations was important for personal decency and social propriety.<sup>244</sup>

Evidence suggests that similar changes took place in America. There are a few examples of cabinetmakers making and selling assistive products in the mid-eighteenth century. In 1751, for instance, Charleston cabinetmaker Thomas Elfe advertised “all kinds of machine chairs...stuffed and covered for sickly or weak people.” In the early nineteenth century, however, the quantity and variety of such contraptions increased in both urban and rural areas. At least seventeen different “invalid chairs,” for example, received patents or awards from the American Institute of the City of New York—an organization dedicated to the exhibition and evaluation of recent inventions—between 1830 and 1835. The number of similar items produced without such official recognition was surely much higher.<sup>245</sup>

Inventors who had physical impairments or had experienced such conditions in the past were well represented among those who worked to profit from this growing industry. Of course, not all creators of accommodating appliances were or had been physically debilitated. In some cases, inventors made goods purely in response to consumer demand; in other cases, they were inspired by their work or encounters with people with incapacities. In 1836, for example, Hezekiah L. Thistle, captain of a company of Louisiana

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<sup>244</sup> Turner and Withey, “Technologies of the Body;” also see: Mihm, “A Limb Which Shall Be Presentable in Polite Society,” in *Artificial Parts, Practical Lives*, ed. Ott, Serlin, and Mihm, 282-299.

<sup>245</sup> *South Carolina Gazette* (Charleston, SC), January 7, 1751, quoted in Alfred Coxe Prime, comp., *The Arts and Crafts in Philadelphia, Maryland, and South Carolina, 1721-1785* (Philadelphia: Walpole Society, 1929), 166, 174-175, and Evans, *American Windsor Furniture, Specialized Forms*, 90. The records of the American Institute from 1808-1983 are held at the New-York Historical Society Museum & Library (New York, NY), MS 17.

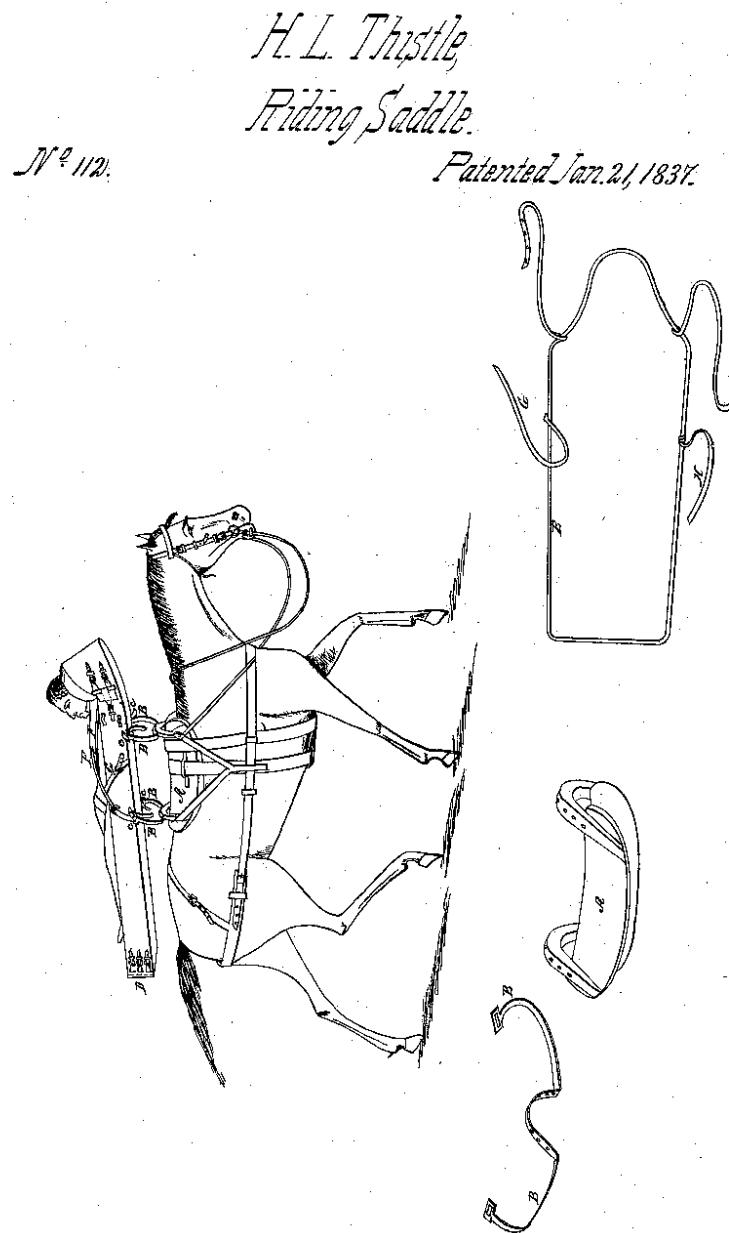
volunteers, fashioned a “saddle for removing the sick and wounded” following his service in the Second Seminole War [Figure 18]. Nevertheless, many inventors of assistive technologies drew on their firsthand knowledge of long-term impairment. They devised, constructed, and marketed products that they hoped would resonate with consumers with similar ailments and needs. In this way, then, disabled inventors’ impairments facilitated their participation in and profit from this burgeoning industry. Like disabled artists, many disabled producers enjoyed long and lucrative careers, demonstrating to their patrons and the public that the experience of affliction had the potential to aid inventive and laboring capacity. In addition, the contraptions that these inventors made and sold provided customers with greater comfort, movement, autonomy, and, in some cases, the ability to resume their labor.<sup>246</sup>

Jenckes’ Alleviator is a good example of an appliance that enhanced users’ comfort. After fracturing his leg and experiencing “excruciating pain when removed,” Jenckes, who was a jeweler by trade, set about designing a machine that, as he advertised, would divest “the bed of sickness and distress...of many of its woes, and those hours of pain and wretchedness, which are the harbingers of approaching dissolution.” His creation was the Alleviator, which consisted of five straps and a crank that hoisted and suspended users above their beds. As Jenckes explained, his device not only “diminish[ed] the burthen of attendants” by making it easier to move bedridden people in order to change their dressings and linens. It also had advantages for its users. The Alleviator eased pain and improved air flow around the body,

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<sup>246</sup> “Useful Invention,” *Army and Navy Chronicle* 3, 17 (Oct 27, 1836), 265.

Figure 18: Hezekiah L. Thistle. Saddle for Removing the Sick and for Other Purposes. Patent US 112 A, January 21, 1837. Available online at <http://www.google.com/patents/US112>.



which was believed to be advantageous to health. In addition, it boosted morale by providing users with a welcome “distance from the bed.”<sup>247</sup>

R. T. was one of many patrons who praised the Alleviator for improving her comfort and healing. Another complimentary customer was Uriel Rea, a mariner and coffee-shop owner from Providence, RI, who wrote in the *Providence Gazette* that the apparatus had decreased the pain and inconvenience of his rheumatism. “Having been afflicted with rheumatism for several years,” he declared, “some of the time confined to my bed for weeks in succession; and so great was my pain that I could not bear to be touched.” But, he continued, “hav[ing] been raised with the above mentioned machine with the utmost ease; I do therefore recommend it to all persons who are similarly afflicted.” Jenckes’ Alleviator seems to have increased many users’ capacity for comfort during periods of confinement.<sup>248</sup>

The Alleviator also aided Jenckes’ own material comfort. Sources indicate that the apparatus sold widely and for a high price. Municipalities purchased Alleviators; the Health Commission of Boston, for example, bought several for the Massachusetts General Hospital and the fort on Castle Island. The contraption was also procured by mutual aid societies, which loaned it to members; physicians, who rented it to patients; and individuals, such as Rea and R. T. Customers often noted the Alleviator’s considerable cost. The

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<sup>247</sup> “Jenckes’ Alleviator,” *Providence Gazette* (RI), May 1, 1824.

<sup>248</sup> “Jenckes’ Patent Apparatus,” *Providence Gazette*, reprinted in *The New-England Journal of Medicine and Surgery, and Collateral Branches of Science*, 112; Robert Grandchamp, Jane Lancaster, and Cynthia Ferguson, “Rhody Redlegs”: A History of the Providence Marine Corps of Artillery and the 103d Field Artillery, Rhode Island Army National Guard, 1801-2010 (Jefferson, NC and London: McFarland & Co., Inc., 2012), 12, 14.

Massachusetts Charitable Mechanic Association, for instance, refrained from purchasing the device because members determined that the price was “too high” and furthermore it was “not exactly suited to any purpose the society might want.” Perhaps most importantly, the Alleviator improved Jenckes’ financial security because its commercial success led him to design and sell other products for impairment. In 1833, he created a Carriage Chair for an Invalid, which was well received by the American Institute, among other organizations, because it permitted users “to move themselves from room to room, and also alter their position of sitting.” Jenckes’ inventions provided greater capabilities to consumers and strengthened his own economic position as well.<sup>249</sup>

Jenckes’ Carriage Chair was one of many new technologies designed to enhance mobility. A similar contrivance was Bethuel Finney’s Rocking Sofa and Easy Chair, called the Eagle, which he made in 1822 to alleviate his rheumatism.<sup>250</sup> Finney’s Eagle allowed users to assume a range of bodily

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<sup>249</sup> “Jenckes’ Patent Alleviator,” *Boston Medical Intelligencer*, June 27, 1826; Jerome V. C. Smith, ed., *Bowen’s Boston News-Letter and City Record*, Vol. 1 (Boston: Abel Bowen, 1826), 168; “Useful Invention,” *Providence Patriot* (RI), May 17, 1823; “The Charter, Article of Agreement, By-Laws, Rules and Regulations of the Providence Association of Mechanics and Manufacturers” (Providence: J. Carter, 1808); “Jenckes’ Alleviator,” *New-Hampshire Observer* (Concord), July 4, 1825. Jenckes probably sold the Alleviator for more than \$30. In 1847, Levi Hutchins, who had obtained the patent rights for the Alleviator in New Hampshire, sold the device to the town of Concord for this amount; “Proceedings of the Annual Town Meeting in Concord, March 9, 10, and 11, 1847,” *Concord City Records*, Historical City Reports, Concord (NH) Public Library. Joseph T. Buckingham, ed., *Annals of the Massachusetts Charitable Mechanic Association* (Boston: Crocker and Brewster, 1853), 183; Judges Reports, 1833, Records of the American Institute of the City of New York for the Encouragement of Science and Invention, 1808-1983; John Knight, ed., *Mechanics’ Magazine and Register of Inventions and Improvements*, Vol. IV (New York: D. K. Minor and J. E. Challis, 1835), 245.

<sup>250</sup> Similar appliances that increased mobility included: John Mead’s Convalescent Chair, Accommodation Couch, and Valetudinary Cot-Chair; William Woolley’s Improved Bedstead for Invalids; Marcus T. Moody’s Elevating Spring Bed; and David Anthony’s Relief Bedstead. “Mechanic Arts: Mead’s jointed, reclining, Valetudinary Cot-Chair, on Rockers,” *The American Magazine* 1 (May 1, 1816), 431; J. Mead, “Reclining Valetudinary Cot, Chair, etc.,” Patent 2,558X (18 Mar 1816), “Convalescent chair,” Patent 2,751X (13 Mar 1817), and

positions at their own discretion. According to A. Denslow, who purchased the patent rights for the device in Connecticut, the Eagle had six possible formulations. It could, he explained, “form a complete permanent chair; secondly, a rocking chair; thirdly, a sofa or bed; fourthly, a cradle; fifthly, giving the body every point of inclination which may be desired, from the natural sitting position to that of lying in bed; and sixthly, giving the motion of a vessel at sea.” Furthermore, Denslow noted, “either or both feet may be suspended, and the various kinds of exercise, motion, and position of body taken, and still have the limb suspended, remain[ing] in its permanent situation.” Although reviews by users of the Eagle are not extant, many observers discussed the ease with which they changed positions. The editors of the *Saratoga Sentinel*, for example, recounted how those “sitting in the chair” could alter it “from a rocking position with as little trouble as lifting a door latch with one hand.” Finney’s Eagle sold widely throughout New England and the Mid-Atlantic despite its hefty price tag of \$70. Customers seemed to see in the product the possibility for greater movement and comfort, their acquisitions supplementing Finney’s already substantial earnings as a lawyer and Vermont state legislator.<sup>251</sup>

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“Accommodation couch,” Patent 2,754X (14 Mar 1817), all available online at Directory of American Tool and Machinery Patents (accessed 12 Dec 2015); “Woolley’s Patent Improved Bedstead for Invalids,” *Mechanics’ Magazine, and Journal of the Mechanics’ Institute* 4, 2 (Aug 1834), 74; “Moody’s Patent Elevating SPRING BED,” *Hampshire Gazette* (Northampton, MA), April 25, 1843; “To the Committee on Manufacturers,” *The Pittsfield Sun* (MA), October 9, 1834; “Relief Bedstead,” *The Pittsfield Sun*, October 16, 1834.

<sup>251</sup> Bethuel Finney, Patent Transfer to “Alanson Palmer” for the “Rocking Sofa and Easy Chair, called EAGLE” in the state of New York, Earnest Archives and Library, <http://www.earnestarchivesandlibrary.com> (Accessed Dec 18, 2015); “Finney’s Patent Easy Chair and Rocking Sofa, CALLED THE EAGLE,” *Connecticut Courant* (Hartford), June 19, 1826; “Rocking Sofa and Easy Chair,” *Saratoga Sentinel* (Saratoga Springs, NY), April 3, 1822; “Patent Rocking Chair,” *New York Statesmen*, reprinted in *Carolina Centinel* (Newburn, NC), June 1, 1822; Leonard Deming, *Catalogue of the Principal Officers of Vermont*, as

Inventors also made products to facilitate mobility across distances in the home and beyond. In Europe, chairs with wheels had been available to the wealthiest consumers since the early eighteenth century and had gained popularity towards the late eighteenth century with Belgian inventor John-Joseph Merlin's production of an "invalid or gouty chair." It was during this period that such devices also became available in America. In 1788, for instance, British cabinetmaker William Long advertised "go chairs, calculated for the use of the sick or decriped" in Philadelphia. According to Long, "a person having only a slight use of one hand, may [use the chair to] conduct himself from room to room, or where he pleases on one floor, with care and expedition, without the assistance of a servant." In the early nineteenth century, chairs with wheels became increasingly popular, user-friendly, affordable, and technologically advanced. By the 1840s, New York City cabinetmaker M. W. King advertised Improved Invalid Wheel Chairs as well as Patent Rocking Chairs, Pivot Revolving Chairs, Self-Acting Extension Recumbent Chairs, Major Serle's U. S. A. Traveling Invalid Chair, and "every variety of Mechanical Chairs, for comfort or convenience." Consumers with various physical impairments valued the ability to change bodily position as well as location, encouraging producers to prioritize user movement in their designs.<sup>252</sup>

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*Connected with its Political History, from 1778 to 1851* (Middlebury, VT: The Author, 1851), 24; "Died," *Vermont Gazette* (Bennington), June 7, 1831.

<sup>252</sup> For more on early wheelchairs, see: Evans, *American Windsor Furniture, Specialized Forms*, 90-92. M. F. Weiner and J. R. Silver, "Merlin's 'Invalid or Gouty' Chair and the Origin of the Self-Propelled Wheelchair," *Journal of Medical Biography* (May 29 2015); "William Long, Cabinet-maker and Carver," *The Pennsylvania Packet, and Daily Advertiser*, July 15, 1788; Judges Reports, 1840, Records of the American Institute of the City of New York for the

Other inventors focused on constructing appliances that enabled people with impairments to continue their work. For wealthy male users, this often meant being able to write, read, and keep accounts. Finney, for instance, equipped his Eagle with “a portable table” that permitted “the occupant having the use of hands to...write, read, or transact business.” Finney may have used his “light table leaf” to facilitate his work as a lawyer during his two-year struggle with rheumatism. During the time that Finney designed and produced the Eagle, at least three British inventors also made contraptions intended to help users with various ailments to write, read, and therefore continue to labor. Although it is unclear whether their devices crossed the Atlantic, American newspapers and publications reported on their inventions. American cabinetmakers, mechanics, and people with impairments thus may have used their ideas to create similar designs.<sup>253</sup>

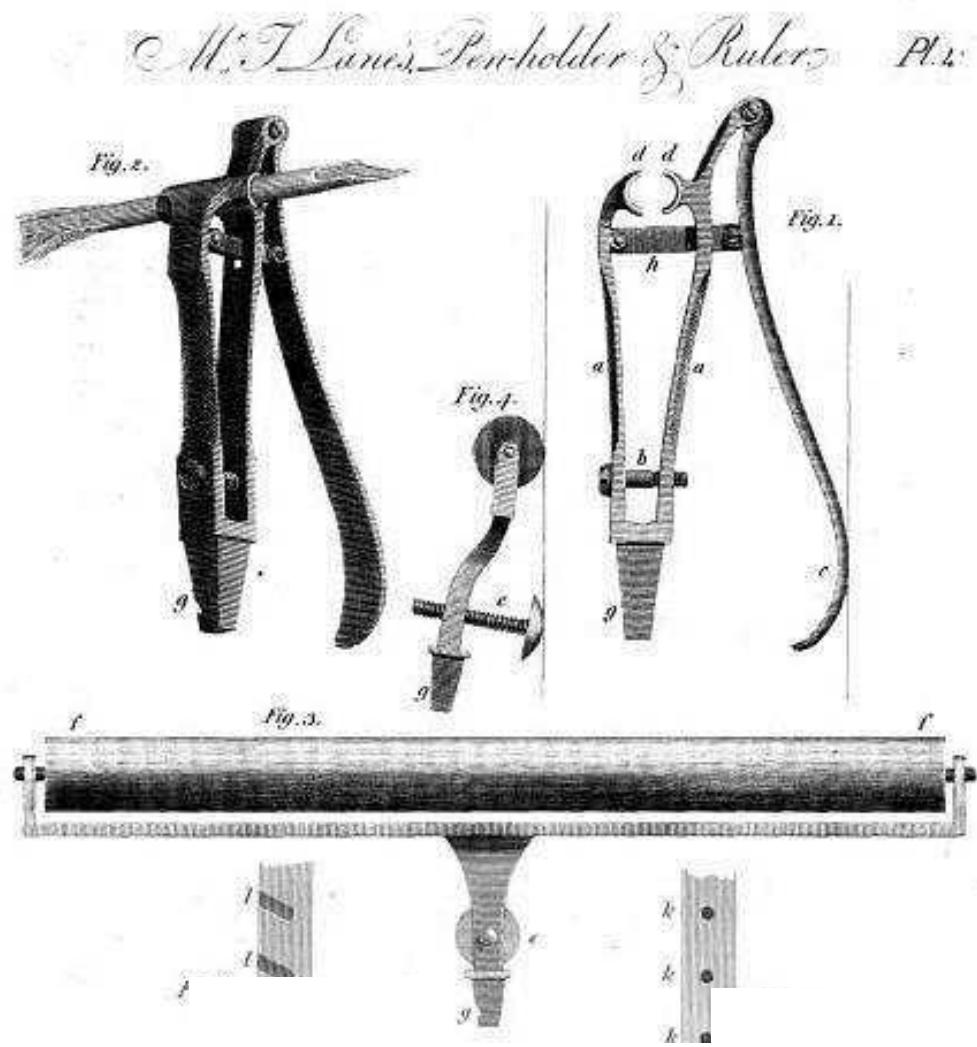
One British inventor was Thomas Lane, who fashioned a “ruler and quillholder” in 1818 at the request of Thomas Holmes, a school usher who had lost one hand [Figure 19]. As Lane explained to the Royal Society for the Encouragement of Arts, Manufactures, and Commerce in London, to which he submitted descriptions and illustrations of his invention, Holmes “had come to London in order to procure some mechanical substitute which might enable him....to make or mend a pen, and to rule lines,” which was necessary to his occupation. In response, Lane had designed a clamp that attached to a table

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Encouragement of Science and Invention, 1808-1983; “M. W. King and Son, Patent Chair Makers,” *The Albion, A Journal of News, Politics and Literature* 6, 16 (Apr 17 1847), 188.

<sup>253</sup> “Finney’s Patent Easy Chair and Rocking Sofa, CALLED THE EAGLE,” *Connecticut Courant* (Hartford), June 19, 1826.

Figure 19: Thomas Lane. Ruler and Quill-Holder. In *Transactions of the Society Instituted at London for the Encouragement of Arts, Manufactures, and Commerce*, Vol. XXXVI. London: Society House, 1819. 74-76, Plate 4.



and secured a pen and ruler between two springs “as tight as required.” In his submission to the Royal Society, Lane included letters from Holmes as well as the school’s master, Reverend Richard Raikes, who confirmed that Lane’s “very ingenious device” had allowed Holmes’ “continued engagement in the business of our school.”<sup>254</sup>

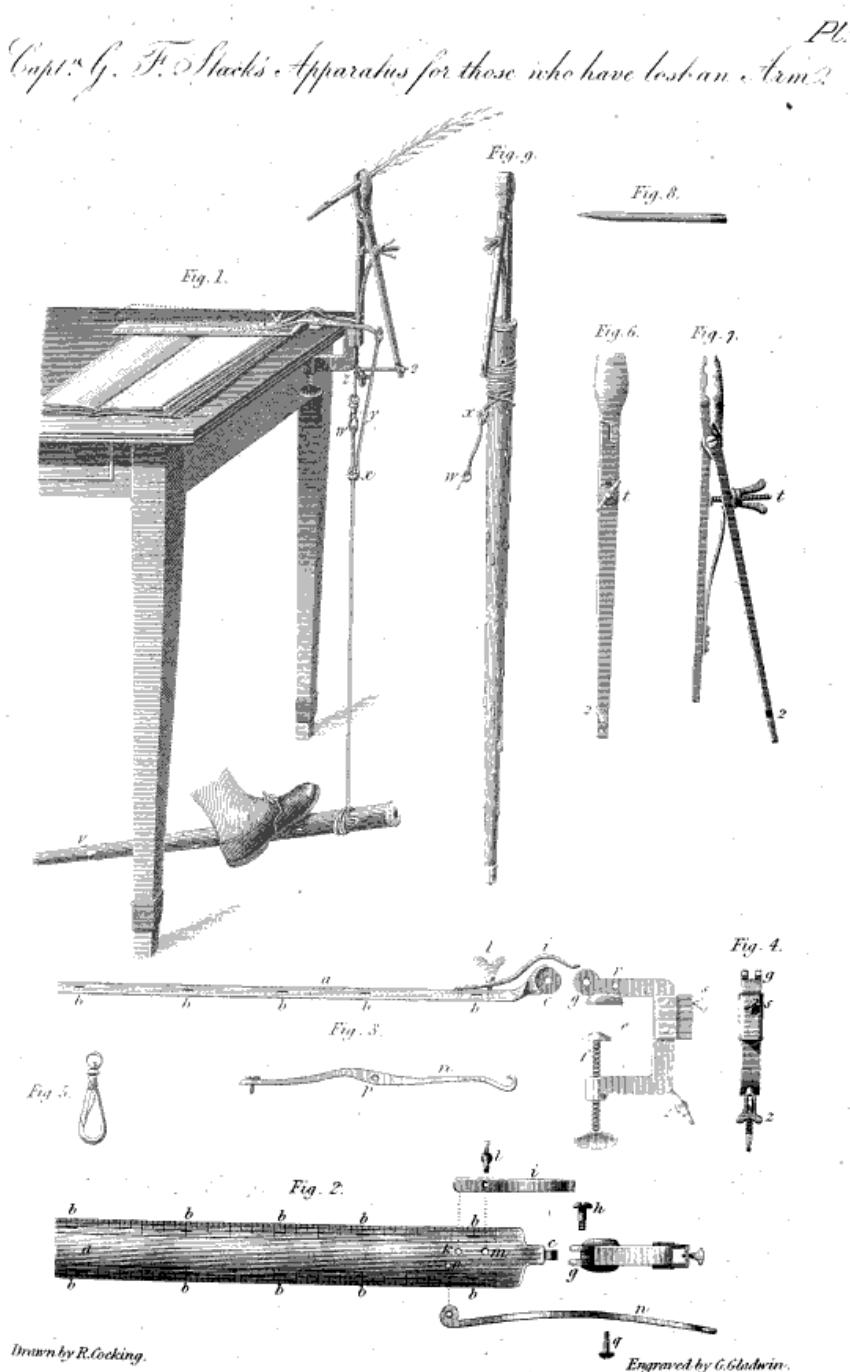
Two years later, George Fitzgerald Stack, a British army captain who had lost an arm in the Napoleonic Wars, also devised a machine to facilitate his labor as a military officer, which required that he “write in the soldiers’ small account books to the number of near a hundred every month” [Figure 20]. As Stack explained in his letter to the Royal Society, his impairment made this duty “impossible to perform without the assistance of a second person to keep the books open,” as he “experienced the greatest difficulty in keeping writing or drawing paper sufficiency steady either to cut, rule, rub with india rubber, fold or seal letters, &c.” Stack noted that Lane’s invention was “not of the least use” to him because he lacked his entire arm whereas Holmes had “lost only a hand.” As such, Stack declared, he had made his own apparatus, which consisted of a paper weight operated by a foot pedal and pincers that served as a pen-holder. Stack assured the Royal Society that his contraption now “answer[ed] all the purposes required at a writing-table” occupied by a one-armed person.<sup>255</sup>

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<sup>254</sup> Thomas Lane, “No. III. Ruler and Quill-Holder,” *Transactions of the Society Instituted at London for the Encouragement of Arts, Manufactures, and Commerce*, Vol. XXXVI (London: Society House, 1819), 74-76, Plate 4.

<sup>255</sup> Captain George Fitzgerald Stack, “No. XXI Apparatus for those who have lost an arm,” *Transactions of the Society Instituted at London for the Encouragement of Arts, Manufactures, and Commerce*, Vol. XXXCIII (London: Society House, 1821), 121-124, Plate 21, emphasis is original.

Figure 20: Captain George Fitzgerald Stack. Apparatus for those who have lost an arm. In *Transactions of the Society Instituted at London for the Encouragement of Arts, Manufactures, and Commerce*, Vol. XXXCIII. London: Society House, 1821. 121-124, Plate 21.



Yet another British military captain who invented assistive technologies was George Webb Derenzy, who, like Stack, had lost an arm in the Napoleonic Wars. Derenzy created numerous instruments that helped him to write. He crafted a quill-holder, which attached to a table using a vice equipped with a universal joint [Figures 21 and 22]. He made a ruler that was “considerably heavier, in order to enable it to resist the pressure made against it.” In addition, Derenzy developed a pen knife with a spring “which render[ed] it safer for a one-handed person than those commonly in use.”<sup>256</sup>

Derenzy went farther than Lane and Stack, however, and also made sixteen appliances that facilitated his labor around the home. He designed a “wash-hand tray” that allowed him to “wash that which remains, far better than any other person could do it for him.” He created two egg cups, which let him “sit down in any company with as much ease and independence as the rest of the guests.” And, Derenzy made a card-holder that eased the challenges his impairments created in social situations. Ultimately, Derenzy’s products helped him to conduct both the market and household labor that was expected of him as an elite white man. Using his stationary equipment, he published a book titled *Enchiridion: Or, A Hand for the One-Handed*, which described and illustrated his instruments for the benefit of others with lost limbs and, at the price of five shillings, helped to support his family. In addition, Derenzy used his household items to perform the bodily sanitation and presentation rituals—washing, grooming, writing, socializing—that were

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<sup>256</sup> George Webb Derenzy, *Enchiridion: Or, A Hand for the One-Handed* (London: T. and G. Underwood, 1822), 34-38.

Figure 21: George Webb Derenzy. Quill-Holder. In George Webb Derenzy, *Enchiridion: Or, a Hand for the One-Handed*. London: T. and G. Underwood, 1822. 36.

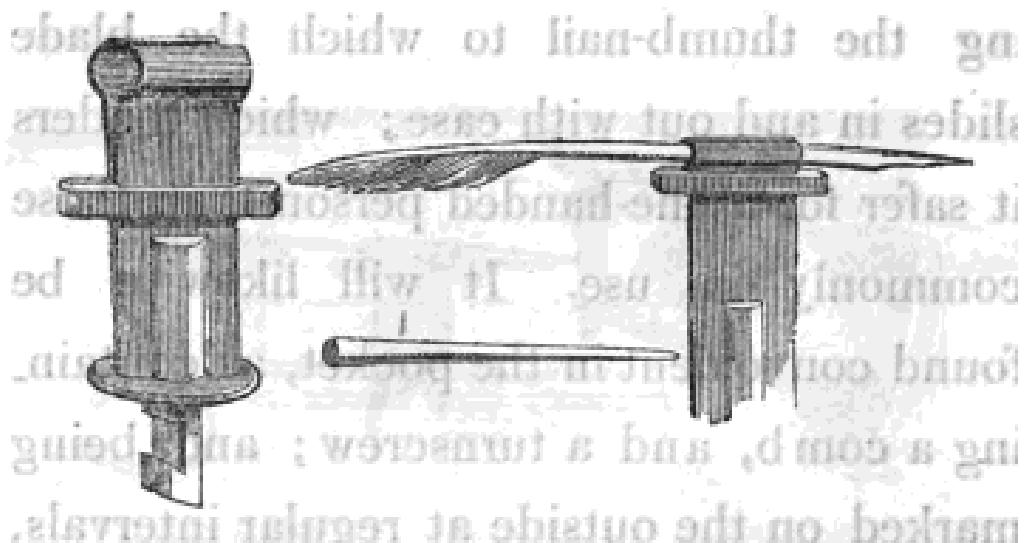
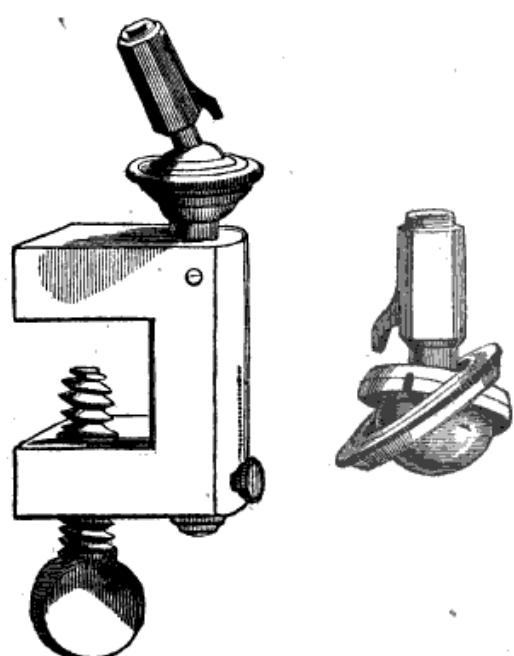


Figure 22: George Webb Derenzy. Vice. In Derenzy, *Enchiridion*. 14.



expected of men in his social position, preserving his status among London's elite.<sup>257</sup>

By publishing his inventions in the *Enchiridion*, Derenzy helped to facilitate the labor of others with similar incapacities as well. Some evidence suggests that poor and middling people consulted Derenzy's volume for assistance in continuing their work. In 1830, for example, a contributor to *The Cottager's Monthly Visitor* reported giving the *Enchiridion* to "a little girl of nearly twelve years of age who has had her *right* arm amputated" to help her "earn her own livelihood" in her small agricultural village. That said, most of Derenzy's contraptions were designed to facilitate the genteel activities of cleansing, grooming, writing, and socializing and thus best suited to elite consumers and their polite work around the home. A review in the *Mechanics' Magazine* even commented on this fact, noting that there were "few one-handed persons in the higher walks of life who have not already availed themselves of [the text's] valuable assistance." The reviewers thus concluded their article with a call to action. "It seems reasonable to hope that the excellent example which Captain Derenzy has set of publishing the results of his personal experience," they declared, "will not be left without numerous imitators" familiar with "the peculiar wants of the one-handed among the manufacturing and trading classes." Derenzy published his stationary and household instruments in a book accessible to readers from diverse

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<sup>257</sup> Derenzy, *Enchiridion*, 14, 30-33, 46-47. For bodily sanitation and presentation rituals, see: Kathleen M. Brown, *Foul Bodies: Cleanliness in Early America* (New Haven and London: Yale University Press, 2009), ch. 5; Lawrence E. Klein, "Politeness and the Interpretation of the British Eighteenth Century," *The Historical Journal* 45, 4 (2002), 869-808.

backgrounds, but nevertheless, like Lane and Stack, his designs were most useful to elite white men.<sup>258</sup>

Poor and middling people sought different technologies to facilitate their labor in cases of bodily affliction. These devices ranged widely and included new items produced and sold in the early national market economy as well as homemade and age-old accommodations made by individuals with impairments and their family, friends, and caretakers for personal use. Early nineteenth-century merchants sold a wide variety of products to alleviate ailments and injuries. In Boston in 1827, for example, surgical instrument maker John Beath advertised “artificial legs” and “machines for remedying deformities;” merchant Charles White vended “pins for hair lips” and “gum elastic nipple shields;” and P. Fox sold “instruments made for straightening children’s deformed feet.” A particular area of invention during the period were trusses, which many working class women and men with hernias credited with their continued ability to work. Between 1800 and 1836, at least 44 patents were filed for types of trusses. Typically made from steel, cloth, or gum elastic, these appliances featured springs, bolts, pads, hinges, and ball and sockets as well as spiraled, convex, double cone, or self-adjusting designs. Many trusses were manufactured and marketed by physicians, perhaps the most famous and successful being Doctor Amos G. Hull. There were also,

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<sup>258</sup> “Employment for the Maimed,” *The Cottager’s Monthly Visitor*, Vol. XX (London: J. G. F. & J. Rivington, 1840), 418, emphasis is original; “Derenzy’s Hand for the One-Handed,” *Mechanics’ Magazine, Museum, Register, Journal, and Gazette*, Vol. XX (London: M. Salmon, 1834) 322-325.

however, producers who made and sold trusses after experiencing hernias themselves.<sup>259</sup>

Isaac Thompson of Brattleboro, VT was one such inventor. In advertisements for his truss, which he patented in 1836, Thompson and his business partner Wadsworth stressed the importance of their personal experiences with hernias to the construction of their product. “The subscribers are aware that there is a number of kinds of Trusses already before the public,” they wrote to the *Rhode-Island Republican*. “But, from *experience* themselves, and from the testimony of others who have worn them,” they continued, “they were induced to believe that a Truss better adapted to the wants of that portion of the community that have a misfortune to have a Hernia, or Rupture, might be made.”<sup>260</sup>

Like many retailers, Thompson and Wadsworth then appended their advertisement with letters from satisfied consumers, which detailed how the contraption had facilitated their labor. George Hale of Winchester, NH, for example, testified that “on commencing haying this season, I was afflicted with Hernia, which became so painful that I was obliged to quit work.” However, Hale noted, after using one of Thompson’s trusses, “[I] was enabled

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<sup>259</sup> “Charles White” and “John Beath’s Patent Improved Trusses,” *Boston Medical Intelligencer*, Vol. IV (Boston: John Cotton, 1826-1827), 72, 272; “New Establishment,” *Providence Patriot & Columbian Phenix* (RI), September 5, 1829. Many similar devices may be viewed online at “Brought to Life,” a website published by the Science Museum in London. For artificial legs and straightening instruments, see: “Lord Byron’s Orthopaedic Boot, England, 1781-1810” and “Pair of Child’s Leg Support, Possibly French, 1601-1650;” for nipple shields, see: “Nipple Shield, English, 1799” and “Nipple Shields, 1786-1821.” Truss patents may be viewed at the Directory of American Tool and Machinery Patents.

<sup>260</sup> “Thompson’s New and Valuable Patent Truss,” *Rhode-Island Republican* (Newport), March 22, 1837, emphasis is original; Isaac Thompson, Patent 9,848X, “Truss for Hernia,” July 1, 1836, Directory of American Tool and Machinery Patents; also see: “New and Valuable Patent Truss,” *Patriot and Democrat* (Hartford, CT), November 26, 1836.

to labor daily, and found no more inconvenience in wearing it than in wearing my stockings." William Carlton of Vernon, VT related a similar story. "In the month of March my Hernia became so bad I was unable to labor," he explained. "I made the application [for a truss] in March, and wore [it] about eight weeks." "On examining, I was satisfied that I was cured," Carlton claimed, "but the truss being so easy to wear I kept it on about four weeks longer, then took it off, and have had no occasion to wear it since." Thompson used his invention to earn his living and to help others with hernias to continue to work as well.<sup>261</sup>

The early nineteenth-century marketplace was filled with appliances that promised to alleviate or accommodate various physical impairments. As this chapter has so far shown, many devices were designed by disabled inventors—such as Jenckes, Finney, and Thompson—who had or had experienced such conditions personally. Capitalizing on their histories of incapacity, they made items specifically intended to enhance user comfort, movement, autonomy, and labor. The enabling implications of their products, as well as their own profitable and successful careers, projected an image of impairment centered on capability, not inability, to their patrons and the public. Significantly, this emerging market for enabling technologies operated alongside rich cultures of home production and adaptation. Many impaired

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<sup>261</sup> Ibid. Another inventor who developed a cure for a hernia based on his own experience was Oliver Ramsdell of Belchertown, MA. As Ramsdell advertised, "I was for a number of years greatly afflicted with a Scrotal Hernia or Rupture, which at least became more troublesome that I was wholly unfit to labor; and having a large family wholly dependent on my labor for support, urged upon me the necessity of seeking the best and most timely relief." Ramsdell explained how he wore a truss for several years to no avail and then "accidently discovered a medicine which to my unspeakable joy and satisfaction has proved a sovereign remedy." Attached letters attest that "O Ramsdell's Specific" helped others with hernias as well. "O. Ramsdell's Specific," *The Connecticut Courant* (Hartford), February 25, 1828.

people made their own assistive contrivances, never manufacturing or selling them in the early national economy. In addition, many altered or re-invented products that they had previously purchased so that they best met their corporeal needs. In these ways, then, users and consumers with ailments became inventors themselves, designing and reformulating appliances for their personal use.

Homemade technologies made by people with incapacities or their caretakers were generally simply constructed according to age-old designs. Many elderly people, especially those with cognitive conditions, used cradles. “Aunt Patty”—a relation of General Artemas Ward of Shrewsbury, MA who was described as “not right” and “simple”—for example, used a plainly-made wooden cradle for more than ten years [Figure 23]. Jane Nylander has also found that “a special low table with a revolving top was made so [that Patty] could reach it from her cradle.” Homemade canes and crutches were common as well. Revolutionary War invalid pension applicants regularly mention such devices. Jonathan Spaulding, who testified on behalf of Enos Blakeslee of New Haven, CT, for instance, declared that Blakeslee worked on his farm using “Crutches in a very feeble manner.” Prints, such as the one depicting a British veteran and beggar in 1810, also often depict simple walking sticks and prosthetic peg-legs [Figure 24].<sup>262</sup>

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<sup>262</sup> “Aunt Patty’s Cradle,” circa 1840, General Artemas Ward Memorial Fund Museum, Shrewsbury, MA, Harvard University Library, Visual Information Access, HU1563; Jane C. Nylander, *Our Own Snug Fireside: Images of the New England Home 1760-1860* (New York: Alfred A. Knopf, Inc., 1993), Figure 34; Case File of Enos Blakeslee, Revolutionary War Record Book of Proceedings for Pensions, 1792-1797; John Collier, “Some write for pleasure, some for spite...” Etching (London: Edward Orme, June 4 1810), Harvard Cushing / John Hay Whitney Medical Library, Yale University, New Haven, CT.

Figure 23: "Aunt Patty's Cradle." Circa 1840. General Artemas Ward Memorial Fund Museum, Shrewsbury, MA. Harvard University Library, Visual Information Access, HU1563. Also see: Jane C. Nylander. *Our Own Snug Fireside: Images of the New England Home 1760-1860*. New York: Alfred A. Knopf, Inc., 1993. Fig. 34.



Figure 24: John Collier. "Some write for pleasure, some for spite..." Etching.  
London: Edward Orme, June 4 1810. Harvard Cushing / John Hay Whitney  
Medical Library, Yale University, New Haven, CT.



Appliances that were adapted or reinvented by consumers for personal use are best studied by examining surviving objects themselves. Many early nineteenth-century chairs and recliners display evidence of added padding and drapery, which may have been applied to accommodate sick and impaired users. One example is a bed chair of mid-Atlantic origin now held at the Winterthur Museum [Figure 25]. Like many devices discussed so far, bed chairs allowed users to recline at any angle and thus were often employed by those confined to their beds. The Winterthur chair shows signs of wear, mending, and added padding. Although the linen foundation and grass and horsehair stuffing were probably installed by an upholsterer prior to purchase, the rectangular fabric patches and related stitching are later additions.<sup>263</sup>

The Bostonian owners of an early nineteenth-century Windsor side chair made even greater alterations, perhaps to accommodate a chronically-impaired individual [Figure 26]. Like the owners of the bed chair, they affixed cushioning to the seat, evidenced by tack-holes still visible in the white pine. In addition, the side-chair owners converted the chair's legs into rockers, presumably to provide a user with the opportunity for subtle motion. Consumers and their caretakers were rarely content to employ purchased products simply as they were designed. In slight and significant ways, they adapted these contraptions to their own bodies and used them in accordance with their distinct corporeal needs.<sup>264</sup>

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<sup>263</sup> Bed Chair / Bed Rest, circa 1790-1830, Philadelphia, Winterthur Museum (DE).

<sup>264</sup> Rocking Chair, Boston, 1808-1815, with alterations 1835-1850, White Pine, Historic Deerfield, in Nancy Goyne Evans, *American Windsor Chairs* (New York: Hudson Hills Press, Inc. in association with The Henry Francis du Pont Winterthur Museum, 1996), 470, Figure 7-34. For more, see: Evans, *American Windsor Furniture, Specialized Forms*, 88. For other chairs with added rockers, see: Great Chair with Added Rockers, Massachusetts, 1680-1700,

Figure 25: Bed Chair / Bed Rest. 1790-1830. Philadelphia. Winterthur Museum, DE.



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with alterations 1750-1850, Ash, Historic Deerfield, HD 2011.14.4; Great Chair, Massachusetts, 1675-1700, Historic Deerfield, HD95.042.

Figure 26: Rocking Chair. 1808-1815, with alterations 1835-1850. Boston. Historic Deerfield, MA. Also see: Nancy Goyne Evans. *American Windsor Chairs*. New York: Hudson Hills Press, Inc. in association with The Henry Francis du Pont Winterthur Museum, 1996. 470, Figure 7-34.



### *Physicians and the Changing Market*

Home production and alteration of enabling technologies continued into midcentury; however, the commercial opportunities of inventors who designed products based on their experiences with corporeal incapacity, not their specialized medical training and knowledge, diminished. With the growing establishment and professionalization of medicine, physicians and institutions, such as asylums and hospitals, became the primary purchasers of assistive appliances. This development shifted the market for such merchandise in significant ways. First, doctors and other medically-minded consumers tended to purchase products from inventors with medical qualifications, giving an edge to these producers. Second, advancements in the study and practice of medicine created a demand for more specialized instruments, with which only physicians and surgical instrument makers were familiar. Third, doctors' assertions of authority over matters of affliction and the body, along with the public's increasing acceptance of their expertise, made those without medical training more reluctant to pursue their inventive ideas and market them commercially. Finally, the growing number of medically-minded consumers led producers to publish their advertisements exclusively in medical journals, excluding those without access to these publications. In these and other ways, doctors established themselves as the principal producers and consumers of technologies for impairment by the mid-nineteenth century. As such, inventors who lacked this specialized knowledge found it difficult to compete.<sup>265</sup>

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<sup>265</sup> For more on medicine, surgical instruments, and technology during the period, see footnote 16 and Joseph M. Gabriel, *Medical Monopoly: Intellectual Property Rights and the*

The prominence of physicians in the industry for accommodating devices emerged gradually over the course of the nineteenth century. Early in the century, doctors worked alongside and in competition with disabled inventors as well as cabinetmakers and other artisans who sold items for impairment as part of their commercial offerings. In New York City in 1811, for instance, Prussian-trained Doctor Theodore Hart, who patented a “double spring angular truss,” competed for business with numerous producers without medical qualifications, including Charles Reade and the French-born jeweler Joseph Cerneau. In some cases, inventors without medical training asked physicians to endorse their products. In 1815, Reade announced that “physicians throughout the States (wherever this Truss is known) highly approve of its construction and superior utility.” Similarly, in 1823, Jenckes featured numerous letters from physicians—including John Mackie, John C. Warren, Samuel L. Mitchell, and eight doctors employed at the New York Hospital—in his advertisements for the Alleviator. During the first decades of the nineteenth century, physicians created and credentialed assistive technologies, but they operated alongside inventors who used their own experiences, not their medical expertise, to demonstrate the worthiness of their designs.<sup>266</sup>

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*Origins of the Modern Pharmaceutical Industry* (Chicago and London: The University of Chicago Press, 2014); “Special Issue: Fitting for Health,” in *Technology and Culture* 54, 3 (Jul 2013), 437-599; Stanley Joel Reiser, *Medicine and the Reign of Technology* (Cambridge: Cambridge University Press, 1978); James M. Edmonson, *American Surgical Instruments: An Illustrated History of their Manufacture and a Directory of Instrument Makers to 1900* (San Francisco: Norman Publishing, 1997).

<sup>266</sup> “Patent Double Spring Angular Truss,” *Commercial Advertiser* (New York, NY), November 26, 1811; “Reade’s Patent Spiral Truss,” *New York Herald* (NY), April 13, 1811; Patent 1, 121X, “Truss for the prevention and cure of ruptures,” Joseph Cerneau, August 17, 1809, *Directory of American Tool and Machinery Patents*; “Important to the Afflicted, *New-York*

Towards the mid-nineteenth century, doctors became more prominent and powerful producers and consumers of appliances for physical incapacity. There are many indications of this development. For one, the number of devices patented by doctors skyrocketed in the 1830s. Between 1800 and 1830, for example, just two of the thirteen patents granted for trusses were filed by those who described themselves as physicians. In comparison, between 1830 and 1838, doctors filed thirteen of the twenty-one patents granted for trusses. Similar differentials can be found in patents for “invalid bedsteads” and related furniture. This transformation in the designations of patentees reveals the considerable increase in the number of physicians involved in the design of accommodating products. Importantly, however, this change can also be explained in other ways. First, an increase in the number of medical schools in the early nineteenth century resulted in more trained physicians after 1830 as compared to earlier periods. Second, in the late 1820s and early 1830s, many states relaxed medical licensing laws, allowing anyone to call themselves a doctor regardless of their medical training or qualifications. As a result, while it seems clear that more physicians invented and patented technologies for impairment in the 1830s, it is also likely that many simply called themselves doctors to enhance their own creditability and that of their products.<sup>267</sup>

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*Gazette & General Advertiser* (NY), October 14, 1815; “Jenckes’ Alleviator,” *Providence Gazette*, May 1, 1824.

<sup>267</sup> Patents are available at the Directory of American Tool and Machinery Patents. The medical qualifications or lack thereof of two inventors in the 1800-1837 grouping could not be located and thus they were eliminated from the proportional assessment. The number of patents in both groupings totals 34. The previous mention that there were 44 trusses patented between 1800 and 1836 is because Hull patented 8 devices and Marsh patented 2. In the 1840s, regular physicians actually began to advocate against the patenting of cures and contraptions because they believed that they should not be proprietary and instead belong

Perhaps a better measure of physicians' intensifying participation in and control of the market for assistive designs can be found in the records of the American Institute and the Franklin Institute in Philadelphia. Both established in the 1820s to, as the former's charter declared, "encourg[e] and promot[e] domestic industry...in Agriculture, Commerce, Manufacturing and the Arts," these organizations regularly assessed the originality and merit of recent inventions. The American Institute held annual fairs at which judges surveyed new technologies and awarded prizes. The Franklin Institute, in comparison, formed a Committee on Science and the Arts, which received submissions from inventors and published descriptions and evaluations of their products in the organization's journal. During the 1820s and early 1830s, both societies frequently assessed devices for impairment, including "surgical" chairs, "invalid bedsteads," chairs with wheels, and trusses. Towards the end of the 1830s, both also recognized and responded, albeit differently, to the growing involvement of physicians in the production and consumption of such technologies, indicating the changing makeup of this industry.<sup>268</sup>

In 1835, the American Institute established a new category of products and prizes called "Surgical Instruments" and selected physicians to be category judges. Earlier in the decade, accommodating contraptions had been evaluated in the category of "Cabinet Work." In 1832, for example, William Woolley's "bedstead for the sick & maimed" was assessed alongside displays

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collectively to the profession; see: Gabriel, *Medical Monopoly: Intellectual Property Rights and the Origins of the Modern Pharmaceutical*.

<sup>268</sup> American Institute of the City of New York, *Charter of the American Institute of the City of New York* (New-York: Elliott and Hegeman, 1832); A. Michal McMahon and Stephanie A. Morris, *Technology in Industrial America: The Committee on Science and the Arts of the Franklin Institute, 1824-1900* (Wilmington, DE: Scholarly Resources, Inc., 1977).

of “metal inlaying” and “mortarly workmanship.” In 1833, however, the fair organizers transferred Woolley’s bedstead and similar appliances to a miscellaneous category comprised of “Machines and models together with such other matters as not being left to specific Judges.” According to the Institute’s leaders, then, submissions, such as Jenckes’ “Carriage Chair for an Invalid” and Doctor Leo Wolfe’s “surgical bedstead,” did not properly belong in the grouping on cabinetry. At the same time, they were not entirely sure of where these articles should be placed.<sup>269</sup>

In 1835, the Institute’s Committee on Premiums asked Doctors David L. Rogers and A. Sidney Duane to serve as the first ever judges of the category on Surgical Instruments. In that year and those following, Rogers (who was a trustee at New York’s College of Physicians and Surgeons and a Surgeon at the New York Ophthalmic Hospital), Duane (who had graduated from Harvard Medical College and authored numerous medical texts), and other renowned physicians evaluated such contraptions as Benjamin Franklin Hays’ Easy Chair [Figure 17], Marcus Moody’s Elevating Spring Bed, and Amos Hull’s “concave pad” truss. By 1835, then, the leaders of the American Institute recognized the increasing specialization of technologies for impairment as well as their alignment with the medical field. As such, they created a new category where these products would be separately evaluated by those they considered to be experts.<sup>270</sup>

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<sup>269</sup> Judges’ Reports, 1832-1835, Records of the American Institute of the City of New York for the Encouragement of Science and Invention, 1808-1983.

<sup>270</sup> Other respected physicians that the American Institute selected as judges included: Cyrus Perkins, a professor of Anatomy and Surgery at Dartmouth Medical College; Valentine Mott, a surgeon and professor at Columbia College and the University Medical College; and Alexander Hosack, a surgeon, founder of a hospital on Wards’ Island in New York City, and

The Franklin Institute's Committee on Science and the Arts took an alternate route. In 1825, they reviewed Jenckes' Alleviator and suggested an alternate construction for parts of "the country where it would be difficult to obtain the wheels." Similarly, in 1835, they proclaimed Woolley's Invalid Bedstead to be "a valuable auxiliary in the treatment of fractures" but with "no claims of originality." When Philip Hittell submitted his truss for review in 1837, however, the Committee hesitated, citing three reasons that they felt unequipped to judge the article. First, they noted, they were unable to collect "sufficient evidence in favor or against the use of the instrument" because users of the truss were "widely separated." Second, the Committee underscored the dangers of universally recommending a device that might only be advantageous in certain situations. "Every case calling for relief presents differences requiring some modification of treatment and exercise of judgment," the Committee held. Even if they could enumerate these various circumstances and qualifications, they continued, such details could be "invariably overlooked or disregarded" by potential users. Finally, the Committee argued that "the granting of certificates relating to matters connected with the healing art will open the door to numberless competitors." This influx of medically-related submissions, they concluded, "could not...fail to produce injurious consequences" for the Institute. In short, faced with the increasing specialization and medicalization of devices for impairment, the Franklin Institute chose to forgo assessing these products altogether. While the American Institute contracted with doctors and gave such appliances their

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physician to Aaron Burr. Judges' Reports, 1835-1840, Records of the American Institute of the City of New York for the Encouragement of Science and Invention, 1808-1983.

own category, the Franklin Institute “respectfully decline[d]” to judge Hittell’s truss and similar items.<sup>271</sup>

By midcentury, physicians were the primary producers and purchasers of technologies for assisting impairment. Along with surgical instrument makers, who developed close ties with medical practitioners and institutions, they designed contraptions based on increasingly specialized medical knowledge and bought devices for use in private practices and newly established hospitals and asylums. It is important, however, not to overstate this development. A thriving market for healthcare products outside of the regular medical profession persisted into the early twentieth century. Cabinetmakers continued to build accommodating furniture. Advertisements by truss-makers without medical qualifications still littered the pages of late nineteenth-century newspapers. Furthermore, although the American Medical Association, which was founded in 1847, condemned “secret nostrums”—or, cures and contraptions that were sold directly to the public—they struggled to enforce these views. In 1849, for example, the Association established a Board to evaluate “quack remedies” and “enlighten the public in regard to the[ir] nature and dangerous tendencies” but lacked the resources to keep it in existence.<sup>272</sup>

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<sup>271</sup> “Jenckes’s Alleviator,” *The Franklin Journal, and American Mechanics’ Magazine*, ed. Dr. Thomas P. Jones (Philadelphia: Judah Dobson, 1826), 34-35; “Woolley’s Bedstead, No. 30,” March 12, 1835, and Philip Hittell’s “Truss (for hernia),” September 14, 1837, The Records of the Committee on Science and the Arts of the Franklin Institute, 1824-1900, American Philosophical Society, MSS.Film.1437; McMahon and Morris, *Technology in Industrial America*.

<sup>272</sup> Starr, *The Social Transformation of American Medicine*, esp. 127-134; American Medical Association, *Codes of Ethics of the American Medical Association* (Philadelphia, T. K. and P. G. Collins, 1848), 16; *The Transactions of the American Medical Association, Vol. II* (Philadelphia, T. K. and P. G. Collins, 1849), 48.

Nevertheless, gradual advances in medical professionalization constrained the commercial opportunities of inventors of appliances for impairment who lacked medical training. The expansion of the medical profession, the increasing number of asylums and hospitals, the growing specialization of the field, and the public's intensifying acceptance of physicians' expert status all combined to give doctors greater control over the production and consumption of such devices. In addition, the American Medical Association continued its fight against therapies and instruments sold to the public without medical evaluation and regulation, a struggle that culminated in 1905 with the founding of a Council of Pharmacy and Chemistry that set standards for how such products could be bought and sold. With these developments, inventors who designed contraptions based on their experiences of incapacity, not their medical education or knowledge, struggled to compete.<sup>273</sup>

Significantly, the involvement of physicians in the industry for assistive products also shaped these items themselves. With doctors now the primary purchasers of such appliances, inventors tended to prioritize medical control and convenience over user comfort and independence.<sup>274</sup> The beginnings of this development can be seen in the late 1830s with the creation of devices specifically for use in hospitals and asylums. In 1836, for example, James Jones, an "experienced nurse" from Providence, RI, was recognized by the American Institute for his Relief Bedstead, which not only "facilitate[d] the

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<sup>273</sup> Starr, *The Social Transformation of American Medicine*, esp. 127-134.

<sup>274</sup> Scholarship on technologies for impairment tends to emphasize these restrictive, medically-oriented devices, missing the prior period that offered greater autonomy to users. See footnote 239.

various necessary changes of position & changes of bed linen of patients with extreme illness," but also featured "a very useful appendage for securing and managing maniacal patients." As *The American Railroad Journal* explained, "this same soft bed is in an instant made to supercede the use of the straight jacket, by confining the body, head, and even the limbs, in the most perfect stillness, and without the slightest pain." Jones' bedstead, then, was not only or even primarily intended to enhance user comfort, movement, and autonomy. Instead, drawing on his experiences during a "great number of years in attending on the sick," Jones invented a product that confined impaired users in order to accommodate the needs of doctors, asylum attendants, and other caretakers. In subsequent years, the American Institute awarded prizes to similar contraptions, including a "hospital bedstead" with "rails of painted iron." As physicians assumed control over the market for technologies for physical incapacity, the designs of these devices also changed to better meet physicians', not users', needs.<sup>275</sup>

Disabled inventors capitalized on new opportunities in the early nineteenth-century market economy to design and sell products that facilitated users' comfort, movement, independence, and work. The enabling aspects of these contraptions projected an image of impairment based on personal,

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<sup>275</sup> "The Committee's attention has also been directed...," Judges Reports, 1836, Records of the American Institute of the City of New York for the Encouragement of Science and Invention, 1808-1983; "Relief Bed for the Use of the Sick," *American Railroad Journal, and Advocate of Internal Improvements, January to July, 1835, Vol. IV, Part I* (New York: D. K. Minor, 1835), 700; "No. 662, Hospital Bedstead," Judges Reports, 1844, Records of the American Institute of the City of New York for the Encouragement of Science and Invention, 1808-1983.

occupational, and financial capability, not inability and loss of livelihood. The careers of disabled inventors further conveyed this alternative notion of impairment, as their histories of physical debilitation became opportunities for innovation and profit. The industry for enabling technologies existed alongside the home production and alteration of such items, with ailing users and consumers inventing contraptions for personal use. Towards the mid-nineteenth century, home production persisted but the commercial opportunities of disabled inventors diminished. Physicians became the primary makers and purchasers of such appliances, using the increasing specialization and professionalization of the medical field to assert control over the industry. With this development, the perceptions of impairment previously advanced by disabled inventors began to fade. Contraptions for impairment now tended to prioritize medical manageability over user autonomy.

## Part III

### The Constitution of Disability

## Chapter 8: Medicine and the Entrenchment of the Category of Disability

In 1828, Doctor Theodric Romeyn Beck, President of the Medical Society of the State of New-York, delivered an annual address to society members. He began by communicating his “anxious wish” to publicly demonstrate and validate the professional standing of physicians. “I can only hope for a participation in...elevat[ing] the character of our common profession,” he declared, and “rais[ing] its disciples to that station to which its liberal studies entitle it.” Beck then outlined one of the means by which he believed medical professionalization might be achieved, also the topic of his address. “Besides the ordinary, but responsible and most interesting duty of attending the sick,” he explained, physicians also had the “important duty to the community” of serving as “professional witnesses” in various legal, political, and social capacities. For the past five years, Beck had published extensively on this subject, writing about doctors’ roles as assessors of, among other things, candidates for military service and pensions, beneficiaries of life and health insurance, and individuals deemed to be cognitively disabled before the law. Now, he stressed to society members, it was in these capacities that physicians had the best opportunities to display their medical talents and advocate for professional recognition.<sup>276</sup>

Beck focused the majority of his address on providing instructions to members in the case that they were asked to serve as a medical examiner.

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<sup>276</sup> Theodric Romeyn Beck, “Annual Address delivered before the Medical Society of the State of New-York, Feb. 6, 1828,” reprinted in *The New York Medical and Physical Journal* (Jan-Mar 1828). Also see: Theodric Romeyn Beck, *Elements of Medical Jurisprudence* (Albany: Websters and Skinners, 1823), 1: chs 1-2, 12; Theodric Romeyn Beck, “Article II: Contributions in Medical Jurisprudence: Of Insurance Upon Lives,” *The New York Medical and Physical Journal* 5, 1 (Jan-Mar 1826), 2.

First, he recommended “stating the facts observed, in plain and perspicuous language” so as to avoid “the imputation of pedantry.” Precision and accuracy should not be sacrificed, Beck asserted, but “many parts can be named by their common appellations, and the appearances observed designated by words in ordinary use,” all of which would aid communication and understanding. Second, Beck stressed that doctors should deliver their testimonies in an “unequivocal manner.” Recent “fluctuations of opinion” between medical evaluators, he argued, “would, if carried to the extent of which they are susceptible, destroy all certainty in medical evidence.” Thus, he urged physicians—who were usually “not sufficiently firm in expressing their sentiments”—to speak “so as at once to evince the decided belief of the individual in it, and the reasons on which it is established.” Finally, Beck highlighted the importance of medical witnesses treating each other with respect. After discussing ways that disagreements between testifying doctors might be avoided, Beck admitted that opposing sentiments would nevertheless arise. In these cases, he insisted, physicians should speak courteously and respect each other’s reputations. “If they do not guard these,” he reminded the medical society members, “others will with pleasure aid in the work of depreciation.”<sup>277</sup>

Beck concluded his address by elucidating how well-trained medical examiners would elevate the status of the profession and contribute to the wellbeing of the American state and society. Working as an adjudicator of disability, he noted, would promote “feelings of professional pride” and “lead

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<sup>277</sup> Beck, “Annual Address delivered before the Medical Society of the State of New-York, Feb. 6, 1828.”

to a more accurate study of the science” by providing physicians with numerous cases for investigation. In addition, Beck argued that doctors should train themselves in medical jurisprudence and seek out opportunities to perform civic and legal examinations because these services were essential to the “proper administration of justice.” Medical testimony, he held, would “prevent that disputation about facts, which produces so many unpleasant collisions in courts of justice.” It might also help legislators, lawyers, and everyday Americans uncover greater truth about questions of disability, disease, and capacity. “When controversy originated in mercantile disputes,” Beck recalled, “the opinions of merchants were of course sought for and depended on.” “So also [in questions of disability],” he asserted, “it was natural, that sooner or later, those should be called upon to examine and testify, whose ordinary studies and pursuits best enabled them to decide.” “None but medical men,” Beck declared, “can be supposed sufficiently capable of judging decisively of the nature of the[se] case[s].”<sup>278</sup>

This chapter examines doctors’ responses to their newfound positions as authorities on disability and the consequences of their involvement for the professionalization of medicine and the emerging classification of disability. Beginning with their appointment as assessors of invalid pension claimants in 1793, physicians were looked to as expert evaluators of disability in diverse contexts—from the provision of educational pensions to deaf and blind young adults to the performances of artists with atypical bodies. Faced with the challenging tasks of defining and determining disability, over and again

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<sup>278</sup> Ibid.

Americans—politicians, school directors, lawyers, mutual aid society members, and everyday individuals—turned to doctors, who were increasingly gaining acceptance as specialists on health, impairment, and the body.

The chapter begins by reexamining physicians' roles as adjudicators of disability in the contexts explored in the previous chapters. Then, taking a cue from Beck's address, it focuses on how they used these opportunities to speak publicly and authoritatively about the body to advocate for professional standing and demonstrate the centrality of their profession to the proper functioning of the new republic. As an expert on medical jurisprudence, leading figure in medical societies, regular correspondent with attorneys, educators, and politicians, and frequent assessor of disability, Beck had much to say about how doctors should approach their positions as civic evaluators. A close look at his life and work, then, suggests how many physicians, often in more subtle ways, used their status as experts on disability to shape the American state and society and the position of their profession within it. The chapter concludes by examining how doctors' involvement in determining disability, in turn, lent greater legitimacy and authenticity to the emerging categorization.

### *Doctors as Disability Experts*

In colonial America, bureaucrats and judges imposed disability-based benefits and restrictions without consulting medical specialists on incapacity, interrogating the individual and family members and friends as they deemed appropriate. Affliction and injury were commonplace corporeal states and

officials seemed to feel confident that they could detect and diagnose such conditions themselves. Furthermore, if anyone was to be consulted about such matters during the period, it was ministers. Viewing physical and cognitive indisposition as an occasion for spiritual reflection and repentance, ailing people and their family members sought guidance from religious figures, who provided both spiritual and medical care.

After the Revolution, bureaucrats first called upon physicians to determine disability. In the 1790s, Secretary of War Henry Knox proposed to Congress that doctors serve the federal government as assessors of Revolutionary War invalid pension applicants, and subsequently orchestrated the passage of legislation appointing “examining physicians and surgeons” in districts across the nation. Faced with the ambiguous meanings of disability and labor, the challenges of evaluating candidates’ conditions, and the mounting petitions from veterans dissatisfied with their allotments, Knox hoped that medical examiners might improve pensioner selection and mitigate ensuing disputes. Nearly fifty years later, politicians in Massachusetts who oversaw the provision of state support to young adults who wanted to attend the New England Institution for the Education of the Blind also asked doctors to assess candidates. Medical evaluations, these statesmen concluded, would improve their ability to select the most deserving students—those who were “incurably” and “totally” blind, free “from any epileptic or contagious disorder,” and capable of becoming laboring, self-sufficient citizens following graduation.

Physicians also began to administer disability-based restrictions and exclusions. Increasingly towards the mid-nineteenth century, judges and attorneys looked to doctors to distinguish who was cognitively disabled and

deserving of guardianship, disenfranchisement, and institutional confinement, among other legal proscriptions, and whose intellectual differences did not warrant such treatment. Although the opinions of medical witnesses were often challenged and overruled in the first decades of the century, judges' and lawyers' difficulties in assessing the limits and degrees of disability led to their increasing reliance on doctors' seemingly expert testimonies. Additionally, physicians came to oversee the emerging category of cognitive disability outside the courts by working as consultants at almshouses and correction houses and administrators at newly-established asylums.

Physicians' newfound positions as disability administrators in the public sector extended to private institutions and the marketplace. Beginning in the 1820s, some Americans in health insurance and mutual aid associations began to hire doctors to supervise disability compensation. Struggling to evaluate applicants for relief according to society-specific metrics of disability, deservingness, and degree, organizations of white men asked physicians to decide controversial cases. Their medical knowledge, members believed, would help them differentiate between worthy and unworthy candidates and resolve disputes between society-appointed overseers, members who desired compensation, and the membership at large. Societies of women and free black men, however, did not incorporate doctors into their determinations of disability. Their actions reveal that physicians' growing acceptance as authorities on disability was most pronounced in venues governed by white men and not absolute, especially in cases where women and free blacks held the final say about such designations.

As doctors became more accepted assessors of disability in governmental, legal, and institutional venues, everyday Americans visiting museums and assessing products to alleviate impairment also began to rely on medical opinion to articulate and evaluate their experiences. Disabled artists and inventors initially captivated patrons with performances and products that challenged emerging constructions of disability rooted in laboring incapacity. Towards the mid-nineteenth century, however, showmen and physicians used customers' increasing acceptance of medical authority to assert control over these markets. Museum managers expanded their institutions in part by collaborating with physicians, who described disabled artists' bodies and skills in ways that customers found convincing. Doctors played an even larger role in the industry for appliances for impairment, dominating the production and consumption of such items so that disabled inventors—who designed devices based on their experiences of incapacity, not their medical training—found it difficult to compete.

By the mid-nineteenth century, then, many Americans viewed physicians as the foremost specialists on disability. In venues as diverse as state-sponsored social welfare, civil and criminal court cases, and the market for services and technologies for impairment, over and again Americans gave doctors the power to identify disabled people, evaluate their physical and intellectual capabilities, and implement relevant social policy.

As Beck's address to the Medical Society of the State of New-York suggests, doctors overwhelmingly welcomed these opportunities to adjudicate disability. Like Beck, many believed that working as a medical examiner had the potential to improve the standing of practitioners. During the period,

physicians had little political influence, economic power, and social clout, and were just beginning to organize and advocate for greater professional recognition. Serving as an expert witness in a highly visible, state- or community-sanctioned role, many doctors argued, would attract greater publicity and prestige than private practice and thus aid professionalization efforts. In addition, physicians embraced their new civic and legal positions because they saw them as part of their professional duties to the republic. Prominent doctors believed that they had significant roles to play in the workings of the American government, economy, and society. Using their status as specialists on disability, then, they hoped to join legislators, lawyers, and other emerging professionals in shaping the future of the United States.

#### *T. R. Beck and the Rise of Medical Jurisprudence*

Beck led efforts to ready doctors to fulfill their new administrative roles. After completing his medical training at the College of Physicians and Surgeons in the State of New-York in 1811 and working for just five years in private practice in Albany, NY, Beck committed himself to the study and practice of medical jurisprudence, a growing field that concerned the application of legal principles to medicine and, conversely, medical knowledge to law. It was within this discipline that he published numerous articles and books about how doctors should approach their new responsibilities as, for example, examiners of wounded veterans and witnesses in trials about insanity. Throughout all of Beck's publications, as well as his own correspondence, emerge his unwavering belief in the professional expertise of

formally-trained “regular” doctors and the applicability of their knowledge to state, social, and economic concerns.<sup>279</sup>

Beck drew upon a longer tradition of medical interest and involvement in legal and civic affairs to complete his works. As he demonstrated in the introduction to *Elements of Medical Jurisprudence*, which he published in 1823 and soon became the foremost American text on the subject, doctors had served as medical witnesses since ancient times. Recent interest in medical jurisprudence, however, had stemmed from faculty and students at the University of Edinburgh who insisted that physicians should play larger roles in the British legal system. In early nineteenth-century England, as in America, judges and lawyers were not required to seek testimony from doctors about matters of health and disease and, in cases where they did, medical witnesses were not paid. Looking to continental Europe, particularly France where physicians’ testimonies were required and compensated in certain cases, Edinburgh professors and students imagined ways that the British medical and legal systems might be better integrated. Inspired by

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<sup>279</sup> For a biography of Beck’s life, see: Frank Hastings Hamilton, MD, *Eulogy on the Life and Character of Theodric Romeyn Beck, MD, LLD, Delivered before the Medical Society of the State of New-York* (Albany, NY: Charles Van Benthuysen, 1856). For more on medical jurisprudence during the period, see: James C. Mohr, *Doctors and the Law: Medical Jurisprudence in Nineteenth-Century America* (New York and Oxford: Oxford University Press, 1993); Michael Clark and Catherine Crawford, eds., *Legal Medicine in History* (Cambridge: Cambridge University Press, 1994); Christine Rabier, ed., *Fields of Expertise: A Comparative History of Expert Procedures in Paris and London, 1600 to the present* (Newcastle, UK: Cambridge Scholars Publishing, 2007); Joel Peter Eigen, *Witnessing Insanity: Madness and Mad-Doctors in the English Court* (New Haven: Yale University Press, 1995); Katherine D. Watson, *Forensic Medicine in Western Society: A History* (New York: Routledge, 2010).

these ideas, Beck began to formulate his recommendations for the American system.<sup>280</sup>

Beck was also influenced by some American physicians who had lectured about medical jurisprudence. Perhaps most prominently, in 1810, Benjamin Rush had urged medical students at the University of Pennsylvania to involve themselves in legal and civic matters. As Robert Eglesfeld Griffith later recalled, Rush had asked students to consider “the extent of the services you will thereby be enabled to render to individuals and the public.” “Fraud and violence may be prevented; unmerited infamy and death may be prevented; the widow and the orphan may be saved from ruin,” Rush had proclaimed, all “by your testimony in a court of justice.” “Nor is that all,” he had purportedly continued. “By cultivating the science I am now recommending, you may extend its benefits beyond our courts of justice, to the legislatures of our country, and thereby become the means of obtaining laws founded upon modern discoveries and opinions in physiology, which shall...relieve judges and jurors from the painful necessity of acting in a discretionary manner.” At the University of Virginia, Robley Dunglison also taught courses on medical jurisprudence in which he covered topics such as “disqualifications from military service,” “pretended disqualifications,” “the deaf and dumb,” “insanity,” and the “insurance of lives.” When Beck quitted private practice and devoted himself to legal medicine in 1817, then, he joined the company of many well-

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<sup>280</sup> Beck, *Elements of Medical Jurisprudence*, 1: intro. For more on medical jurisprudence in physicians’ education, see: Mohr, *Doctors and the Law*, chs 1 and 2; Lisa Rosner, *Medical Education in the Age of Improvement* (Edinburgh: Edinburgh University Press, 1991), ch. 9; Chester R. Burns, “Medical Ethics and Jurisprudence,” in *The Education of American Physicians: Historical Essays*, ed. Ronald L. Numbers (Berkeley/Los Angeles, CA and London: University of California Press, 1980), 273-289.

regarded physicians who also believed that they had larger roles to play in American government and society.<sup>281</sup>

Beck intended his first publication, *Elements of Medical Jurisprudence*, to provide doctors with all the “facts that are necessary to be known” about the various situations in which they might be asked to evaluate disability. He began by instructing readers in how to detect people who pretended infirmity for their own gain. Feigned diseases were endemic, Beck explained. “The individual ordered on service, will pretend being afflicted with various maladies to escape the performance of military duty—the mendicant, to avoid labour, and to impose on public or private beneficence—and the criminal, to prevent the infliction of punishment.” But, Beck continued, with proper guidance, doctors could learn the best methods to distinguish between imposters and those with honest incapacities and contribute to a “well-regulated country.”<sup>282</sup>

To this end, Beck provided readers with a list of impairments that were commonly simulated and included: “pain in various parts;” “maiming and deformity;” and “blindness and deafness, with or without dumbness.” Drawing on seventeenth-century Italian physician Paul Zacchias, Beck also outlined a five-step approach for detecting manufactured disability. “The physician must,

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<sup>281</sup> Robert Eglesfeld Griffith, “Art. III. On Medical Jurisprudence,” *The Philadelphia Journal of the Medical and Physical Sciences* 1, 1 (Jan 1, 1825), 36; Robley Dunglison, *Syllabus of the Lectures on Medical Jurisprudence and on the Treatment of Poisoning & Suspended Animation, Delivered in the University of Virginia* (Charlottesville, VA: Clement P. McKennie, 1827).

<sup>282</sup> Beck, *Elements of Medical Jurisprudence*, 1:3-5. *Elements of Medical Jurisprudence* was a large and expansive work, comprising two volumes that totaled over 1,300 pages. After its first release in 1823, Beck issued ten new editions, the last in 1850 just five years before his death.

in all suspected cases, enquire of the relatives and friends of the suspected individual, what are his physical and moral habits," he asserted. In addition, it was necessary to "compare the disease under examination, with the causes capable of producing it" and notice "the aversion of persons feigning disease to take proper remedies." In following these rules, Beck noted the particular challenges of determining when people were not simply feigning disability but exaggerating it—when "disease is actually present, but where the symptoms are falsely aggravated." In such cases, he advised doctors to "steer a middle course between too great incredulity and too great confidence" and cautiously but assertively "apply the rules already laid down."<sup>283</sup>

Beck continued *Elements* by outlining the "disqualifying diseases" that exempted individuals from civic, legal, and military obligations. Physicians must be able to "ascertain whether an individual is fit to serve on a jury, whether he is able to attend as a witness, or whether he is competent to take on him certain offices or duties," Beck held. In addition, doctors should know how to "minutely investigate...any man's fitness for service." To help readers attain these competencies, Beck discussed the diseases—from rheumatism to asthma—that might preclude people from testifying in civil court. He summarized the infirmities that would "make the application of irons to [a criminal's] limbs, or the condemnation to hard labour, a sentence more dreadful than death itself." And, Beck provided a six-page list of the disorders that excused conscripts from military service in France, which he advised American doctors to adopt as it was "more perfect than that of any other

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<sup>283</sup> Ibid.

nation." At all times, Beck encouraged medical examiners to be thorough, meticulous, secure in their skills, and wary of deception. "The surgeon should feel himself bound by every principle of honour and of justice," Beck proclaimed, "not to injure the public" by improperly granting exemptions. At the same time, he declared, "nothing can be more disgraceful than that a surgeon—one who is supposed to know the nature and symptoms of disease—should be deceived by an individual who feigns his maladies."<sup>284</sup>

In the remainder of *Elements*, Beck dealt with particular afflictions or conditions over which physicians might have to preside. His longest chapter focused on "mental alienation," or how doctors should evaluate idiocy and insanity. Throughout the section, Beck acknowledged the "insuperable difficulties" of accurately assessing cognitive capacity. "What can be more alike, than the anger of the sane and insane?" he wrote. "What a similitude between the maniac and the habitually passionate—between the melancholic, and him who habitually broods over his malignant and revengeful conceptions." Nevertheless, Beck insisted that doctors were best equipped to appraise mental character. In cases of insanity, he noted, "it is very common for persons of every class in society, to come forward with their testimony, stating that the individual is or is not insane, while their depositions are often founded on transient conversations—or short or inattentive examinations, or on a slight notice of counterfeited or ordinary actions." Beck condemned such untrained and unfounded evaluations. "These are not calculated to determine the true state of mind," he asserted, and "may lead to serious errors,"

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<sup>284</sup> Ibid, 1: 30-34, 42.

especially in cases where the “boundaries” between insanity and sanity approached “so near.”<sup>285</sup>

To help physicians accurately assess cognitive capacity, Beck provided numerous instructions. He urged readers to familiarize themselves with the types of mental disturbance, from mania to melancholy, along with their corresponding bodily characteristics—an eye that “flashed fire,” a “peculiar animal odour,” a “dull muddy look.” Then, when asked to serve as a medical examiner, Beck recommended spending several days with the purported idiot or lunatic before pronouncing an opinion. Insane individuals often attempted to disguise their disorder, he argued, and were capable of reasoning correctly on many ordinary topics. To form an accurate determination, it was thus necessary to take time and watch for moments “when the ruling malady breaks forth,” when the “mind launches into the regions of fictions, its admired clearness becomes obscured, and its seeming regularity exhibits a confused assemblage or violent distortion.”<sup>286</sup>

Beck also offered advice on how to ascertain the various degrees of insanity. He summarized the “inferior degrees of diseased mind,” such as hypochondria and hallucination, which were less severe than other derangements but nevertheless compromised a subject’s understanding of right and wrong. In addition, he instructed readers in how to identify a “lucid interval,” or a temporary cessation of insanity during which those tried in criminal cases could be held responsible for their actions. In all, Beck

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<sup>285</sup> Ibid, 2: ch 1 and 2, 1: 370, 355.

<sup>286</sup> Ibid, 1: 336, 343, 350, 352, 360.

emphasized careful and comprehensive evaluations of physical and cognitive attributes and definitive decisions based on evidence. With this approach, he claimed, doctors could best fulfill their “great responsibility” as civic and legal adjudicators.<sup>287</sup>

After publishing *Elements* in 1823, Beck turned his attention to still other capacities in which physicians might preside over disability in a series of essays titled “Contributions in Medical Jurisprudence and Police.” Published in the *New-York Medical and Physical Journal*—which Beck’s brother, John Brodhead Beck, founded the previous year—the articles covered topics from the duties of medical consultants to insurance societies to the means of determining which individuals should be sent to asylums. In Beck’s first essay on insurance, he explained how doctors should assess “the age, constitution, and health of the individual insured, the tendency of the trade, occupation, or profession, which he pursues [to produce disease], and his habits as to diet and regimen.” He also offered advice on resolving common society disputes about the inception of affliction, noting that “even when there is an express warranty than the person is in good health...it can never mean that the insured is perfectly free from the seeds of disorder.”<sup>288</sup>

Beck’s subsequent treatises covered topics from physicians’ roles in state and federal census-taking to their involvement in asylum management. He exposed the “carelessness” of marshals who had recorded the numbers of “deaf and dumb,” “idiot,” and “lunatic” people in a recent New York state

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<sup>287</sup> Ibid, 1: 364, 372, 377.

<sup>288</sup> Theodric Romeyn Beck, “Contributions in Medical Jurisprudence and Police, No. I: Of Insurance on Lives,” *The New York Medical and Physical Journal* 5, 1 (Apr-June 1826), 2.

enumeration, implying that doctors might perform this service better in the future. He also dealt with the medico-legal implications of congenital impairment and the obligations of politicians, physicians, and everyday individuals to helping insane people recover by “safe-keeping” them at institutions. In *Elements* and his later publications, then, Beck explored the many diverse ways that doctors might serve the state and institutions as medical evaluators. By providing relevant medical and legal information and practical advice, he aimed to help physicians develop an authoritative voice and an expert demeanor, and best fulfill their new administrative roles.<sup>289</sup>

Beck believed his work on medical jurisprudence to be crucial to the advancement of the medical profession. He argued that doctors’ legal and governmental employment would aid medical research. In the preface to his series in the *New-York Medical and Physical Journal*, for example, Beck explained that physicians performed better investigations when there were real-life implications. “When life, property, or reputation are at stake,” he wrote, doctors felt “a due sense of responsibility” to comprehensively study the subject in question and “understand all the *possible* phases under which it

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<sup>289</sup> Theodric Romeyn Beck, “Contributions in Medical Jurisprudence and Police, No. II: Results taken or deduced from the Census of the State of New-York for the Year 1825,” *The New York Medical and Physical Journal* 5, 2 (Apr-Jun 1826), 205; Theodric Romeyn Beck, “Contributions in Medical Jurisprudence and Police, No. III: Trials for Murder,” *The New York Medical and Physical Journal* 5, 3 (Jul-Sep 1826), 427; Theodric Romeyn Beck, “Contributions in Medical Jurisprudence and Police, No. IV: Duration of Human Pregnancy,” *The New York Medical and Physical Journal* 6, 2 (Apr-Jun 1827), 224; Theodric Romeyn Beck, “Contributions in Medical Jurisprudence and Police, No. V,” *The New York Medical and Physical Journal* (Oct-Dec 1828), 492; Theodric Romeyn Beck, “An Account of Some of the Lunatic Asylums in the United States” (Apr-Jun 1828), 186; Theodric Romeyn Beck, “Supplement to the account of some of the Lunatic Asylums of the United States” (Apr-June 1828), 251. Also see: “Facts and Inferences, chiefly relating to Medical Jurisprudence; in a letter to Professor T. R. Beck, MD of Albany, from John W. Francis, MD Professor of Obstetrics, &c,” *The New York Medical and Physical Journal* 2, 1 (Jan-Mar 1823), 9.

may occur," even more so than if the query was conducted abstractly. Beck also claimed that physicians' bureaucratic and institutional involvement would contribute to medical research by making it more public. "Even if [a medical witness] does not perform his duty, either through inattention or incapacity," Beck reasoned in his preface, "subsequent examiners will pursue the inquiry, detect his fallacies or his ignorance, and in a process of time, establish a doctrine, or a principle, in which the wisest of the profession are disposed to unite." By focusing research on practical situations and publicizing the results, then, Beck insisted that medical jurisprudence could reduce uncertainty in the field of medicine, which he lamented was "a subject of ridicule with superficial reasoners, and of deep regret among the enlightened and learned."<sup>290</sup>

Beck also argued that doctors' service as medical examiners would improve their professional standing by demonstrating their knowledge about disability, disease, and the body to the public. In his address to the Medical Society of the State of New-York, Beck acknowledged the anxieties that physicians might have about working as a medical witness. Perhaps they worried they lacked sufficient expertise, he noted, or training in the skills required. Medicine was "a most laborious and engrossing occupation," he admitted, and the opportunities for continued study after receiving the degree were "extremely narrow." In addition, Beck recognized that doctors might fear invoking the anger of those harmed by their determinations. There were

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<sup>290</sup> Beck, "Contributions in Medical Jurisprudence and Police, No. I: Of Insurance on Lives," *The New York Medical and Physical Journal*, 2, emphasis is original.

cases, he declared, of practitioners “looked upon with that evil eye” for years following a controversial lawsuit or an unfavorable evaluation.<sup>291</sup>

Nevertheless, Beck insisted that physicians’ employment in legal and bureaucratic arenas was professionally necessary and desirable. It held the potential for greater prestige compared with private practice. It also promoted feelings of pride among doctors about their profession. “It is surely no mean exertion of human skill,” he proclaimed, “to be brought to a dead body...and from a course of deductions founded in the strictest logic, to pronounce an opinion, which combined circumstances, or the confession of the criminal, prove to be correct.” Beck located doctors’ service as medical evaluators at the heart of their demands for professional recognition. “It is such duties ably performed,” he declared to the medical society, quoting the *Quarterly Journal of Foreign Medicine and Surgery*, “that raise our profession to an exalted rank in the eyes of the world.”<sup>292</sup>

Beck worked to improve the professional status of physicians by preparing them to fulfill their responsibilities as adjudicators of disability. In addition, he took advantage of his position as a leading scholar of medical jurisprudence and the president of the Medical Society of the State of New-York from 1828-1830 to lobby for political privileges for doctors at the state level. Beck firmly believed that the government had the obligation to promote and protect the standing of regular physicians because of the contributions they would make to American law and society. He advocated for state

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<sup>291</sup> Beck, “Annual Address delivered before the Medical Society of the State of New-York, Feb. 6, 1828.”

<sup>292</sup> Ibid.

regulation of the profession as a means to thwart untrained healers. In an essay about New York licensing laws, for example, Beck praised those that strengthened such procedures and condemned others that erased benefits doctors previously had, such as exemption from military service. Beck also often argued that physicians should be promoted to prominent public roles. In an essay on insane asylums, for instance, he wrote that “the most humane, the most efficient, as well as the most economical plan” would be for states to erect these institutions and for doctors to be appointed as superintendents.<sup>293</sup>

To bring about the mutually beneficial relationship that he saw existing between medicine and government, Beck used both personal and professional means. He corresponded with powerful lawyers and politicians—from James Kent, who served as Chancellor of New York, to DeWitt Clinton, who served as Governor—with all of whom he shared his views. Beck also more formally petitioned the New York legislature in his capacity as president of the state medical society. In 1828, for example, he and other members successfully petitioned the assembly to bar those with medical diplomas from other states from practicing in New York without society permission.<sup>294</sup>

Perhaps Beck’s greatest political accomplishment on behalf of physicians seeking enhanced professional status was his influence on the New York state code of 1829. Five years prior, the legislature had appointed a

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<sup>293</sup> Theodric Romeyn Beck, “A Sketch of the Legislative Provision of the Colony and State of New-York, respecting the Practice of Physic and Surgery, Communicated to the Editors,” *The New York Medical and Physical Journal* 1, 2 (Apr-Jun 1822), 139; Beck, “An Account of Some of the Lunatic Asylums in the United States,” 186.

<sup>294</sup> Beck, “Annual Address delivered before the Medical Society of the State of New-York, Feb. 6, 1828. For more on Beck’s political influence, see: Mohr, *Doctors and the Law*, ch. 6.

three-man committee to compile and reconsider the state's laws. One member, John C. Spencer, knew Beck, perhaps from their undergraduate studies at Union College, and reached out to him for advice on medically-related matters. Through their continued correspondence, Beck directly influenced legislation governing doctors' rights and privileges. As Spencer wrote to Beck, "I have prepared various Sections against medical malpractice according to your Suggestions, particularly the improper use of instruments, capital operations in Surgery, selling poisons &c." In his publications on medical jurisprudence as well as his political maneuvers, then, Beck helped physicians demonstrate and defend their professional reputations.<sup>295</sup>

Like many doctors, Beck was committed to facilitating physicians' legal, governmental, and institutional involvement because he believed it was best for the new nation. As he stated to the New York medical society in 1828, doctors' services would uncover greater truth in questions of health and disability and dispel controversies between attorneys, politicians, and citizens. Even more, Beck often insisted that physicians' civic and legal work had the potential to reduce corruption and crime more generally. The knowledge that a medical investigation was likely or imminent, he argued, would dissuade individuals from attempting to feign disability to their advantage. It might also discourage people from engaging in illicit behavior. The belief that a medical evaluation would occur and expose incriminating evidence, Beck declared,

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<sup>295</sup> John C. Spencer to Theodric Romeyn Beck, September 11, 1828, in Theodric Romeyn Beck Letters, 1825-1855, New York Public Library. Also see: *Notes on the Revised Statutes of the State of New York: Pointing Out the Principal Alterations Made by Them in the Common and Statute Law* (Albany: Websters and Skinners, 1830) and *Revised Statutes of the State of New York* (Albany: Packard and Van Bentruysen, 1836).

“probably does not more to restrain the hand of the murderer than any other cause.” Beck’s commitment to physicians’ employment as adjudicators of disability was motivated only in part by desires for medical professionalization. Forming a close partnership between lawyers, legislators, and doctors, Beck also believed, was necessary for the safety and security of the United States.<sup>296</sup>

### *Patriotic Professionals and the Category of Disability*

Beck was not alone in his commitment to physicians’ civic and legal participation, the growing field of medical jurisprudence, and the campaign for medical professionalization. His publications were well received and widely consumed. *The Medical Repository of Original Essays and Intelligence*, for example, praised *Elements* as “an invaluable text book” for medical students and lawyers in cases in which “the testimony of experienced physicians is indispensable.” *Anderson’s Quarterly Journal of Medicine and Surgery* similarly recommended the text as “superior...for practical medical consultation, and for the library of medical practitioners.” Sales of *Elements* were robust, as it became required reading in medical and law school courses across the nation. In addition, Beck’s publications were frequently cited by doctors and lawyers in court. As late as 1879, attorneys in a supreme court case about murder and insanity read directly from *Elements* to support their claims. With the increasing opportunities for physicians to serve as medical

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<sup>296</sup> Beck, “Annual Address delivered before the Medical Society of the State of New-York, Feb. 6, 1828;” Beck, *Elements of Medical Jurisprudence*, 1: intro and ch 1.

evaluators and their heretofore lack of experience in these roles, many looked to Beck for advice. Their rave reviews of his work suggests that they came to share his belief that doctors' adjudication of disability would promote their professional status and contribute to the proper functioning of the nation.<sup>297</sup>

The men most attracted to medical jurisprudence and governmental, legal, and institutional involvement were similar to Beck in their education, experience, and objectives. Many had received their medical training at newly established American medical schools, such as the College of Physicians and Surgeons in the State of New-York, and had learned about medical jurisprudence in their lectures and courses, such as those by Rush and Dunglison. Like Beck when he published *Elements*, many were also just beginning their careers and looking to make their mark on the profession and society. Charles D. Meigs, who worked as a medical consultant for the Pike Beneficial Society of Philadelphia for over fifteen years, for example, graduated from the University of Pennsylvania in 1815, just following Rush's death. When he elected to serve as the Pike Beneficial Society doctor in 1827, he had just moved back to Philadelphia and was struggling to develop his practice—in the words of his eulogist, “undergo[ing] a period of probation

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<sup>297</sup> “Elements of Medical Jurisprudence,” *The Medical Repository of Original Essays and Intelligence* 8, 3 (Jul 1 1824), 321; “Elements of Medical Jurisprudence,” *Anderson’s Quarterly Journal of Medicine and Surgery* 4, 21 (Sep 1 1824), 137. For examples of medical and law school courses that assigned *Elements*, see: Thomas Stewart Traill, *Outlines of a Course of Lectures on Medical Jurisprudence* (Edinburgh: Adam and Charles Black, 1840), 14; David Hoffman, *A Course of Legal Study, Addressed to Students and the Profession Generally, Second Edition* (Philadelphia: Thomas, Cowperthwait & Co., 1846); 697-705; James Wynne, *Importance of the Study of Legal Medicine: A Lecture Introductory to a Course of Medical Jurisprudence at the New York Medical College* (New York and London: H. Bailliere, 1859), 1. *Bales v. The State*, 63 Ala. *Reports of Cases Argued and Determined in the Supreme Court of Alabama, Second Edition* (St. Paul: West Publishing Co., 1905), 30, 34. Also see: Mohr, *Doctors and the Law*, 25-28.

in which patients were the persons who in smallest number came under his notice." Thaddeus Brown of Billerica, MA and Adams Nichols of Gloucester, MA, who had evaluated beneficiaries to the New England Institution for the Education of Blind in the 1830s, had similar stories. Graduates of Yale and Harvard medical colleges respectively, they took on their civic roles after recently moving to their respective locations, joining the Massachusetts Medical Society, marrying, and launching their practices. Like Beck, then, these men pursued medical jurisprudence because they saw it as a means to bolster their reputations, demonstrate their expertise, and, unlike Beck who abandoned private practice, form relationships with potential clients.<sup>298</sup>

For many doctors, administrative work did help them cultivate successful careers. Meigs became a renowned specialist in obstetrics, a professor at the Jefferson Medical College, and the author of numerous publications, including the influential *Treatise on Obstetrics; The Science and The Art*. Although Brown died at the age of thirty-seven before his career fully developed, Nichols went on to run a thriving medical practice in Quincy, Illinois, where he founded and served as president of the Adams County, Illinois Medical Society. Other doctors also used their positions as civic and legal examiners to boost their reputations and opportunities. Thomas Duche Mitchell—who corresponded about Hervey, the "Albiness," just five years after

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<sup>298</sup> John Bell, "Obituary Notice of Charles D. Meigs, M.D.," *Proceedings of the American Philosophical Society* 13, 90 (1873), 170-179; Billerica Historical Society, *Images of Billerica* (Charleston, SC: Arcadia Publishing, 2002), 80; Henry Allen Hazen, *History of Billerica, Massachusetts, with a Genealogical Register* (Boston: A. Williams and Co., 1883), 32; Adams Nichols to Martha Boardman, October 25, 1829, Gloucester Marriages, The Massachusetts Vital Records Project (2005-2015); John W. Marshall, et. al. eds., *History of the Town of Rockport, as Comprised in the Centennial Address of Lemuel Gott, MD* (Rockport, MA: Rockport Review Office, 1888), 82; *Medical Communications of the Massachusetts Medical Society, Vol. V, Second Series, Vol I.* (Boston: The Society, 1836), 69.

he studied under Rush at the University of Pennsylvania—went on to author seminal medical texts and hold professorships at Jefferson Medical College and the Medical College of Philadelphia, among other institutions. After testifying about the insanity of David Barber in 1811, Charles Blake also cultivated a profitable medical practice in Northfield, MA, which he had begun five years prior and continued for more than thirty years. For John Mackie, who evaluated Jenckes' Alleviator, one administrative position led to another. Five months after reviewing the apparatus, he served as a witness in a lawsuit about the cognitive afflictions of Methodist minister John N. Maffitt. The practice of medical jurisprudence thus offered many physicians, especially those at the beginning of their careers, with a means of portraying and elevating their professional status.<sup>299</sup>

Like Beck, the doctors who engaged in civic and legal work were not only committed to promoting their own reputations; they also endeavored to improve the standing of the profession as a whole. The majority participated in medical societies. Examiners of Revolutionary War invalid pension claimants, for example, often noted their membership to medical organizations in their reports. As John Clark explained in his assessment of Isaac Buell, “[I am] one of the Assistants of this State...an approved practicing Physician or Surgeon,

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<sup>299</sup> Bell, “Obituary Notice of Charles D. Meigs, M.D.” 170-179; Charles D. Meigs, *Obstetrics; The Science and the Art, Fifth Edition, Revised* (Philadelphia: Henry C. Lea, 1867); “Obituary: Dr. Adams Nichols,” *Medical and Surgical Reporter* 25, 25 (Dec 16, 1871), 558; Thomas Duche Mitchell, “Notes on the Lectures of Doctor Benjamin Rush, Professor of the Institutes and Practice of Medicine in the University of Pennsylvania, 1809-1811,” Historical Medical Library, College of Physicians of Philadelphia; Howard A. Kelley and Walter L. Burrage, *American Medical Biographies* (Baltimore: The Norman, Remington Company, 1920), 805-806; Herbert C. Parsons, *Puritan Outpost: A History of the Town and People of Northfield, Massachusetts* (New York: The Macmillan Company, 1937), 497; *Report of the Trial of Mr. John N. Maffitt, Before a Council of Ministers, of the Methodist Episcopal Church, Convened in Boston, December 26, 1822* (Boston: True and Greene, 1823), 26.

of large Experience as a Fellow of the Medical Society [of the State of Connecticut]." Some doctors who served as disability evaluators held influential roles in their medical societies and actively lobbied federal and state bodies for greater support. Felix Pascalis, who also wrote about Hervey, composed the New York state medical society's ethical code—the object of which was to "regulat[e] the profession in their intercourse with each other and in cases of consultation." Samuel Latham Mitchell, John Collins Warren, Valentine Mott, and David L. Rogers, all respected physicians who had reviewed inventions for alleviating impairment, also held permanent or honorary memberships to the New York society during its efforts to secure licensing and other privileges. Serving as a medical witness thus was an opportunity for doctors to advance both themselves and their profession.<sup>300</sup>

Emboldened by the increasing opportunities to serve as medical witnesses, many physicians also began to imagine possibilities for greater state and medical collaboration. Perhaps the most widely championed idea—espoused by Beck as well as Robert Eglesfeld Griffith, Rush's student who pursued a career in medical jurisprudence of his own—was the appointment of designated doctors who would oversee all civic and legal matters in their assigned districts. Based on the French system and organized akin to the "examining physicians and surgeons" model implemented by Knox and other bureaucrats for invalid pensions, these state-sponsored medical evaluators

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<sup>300</sup> United States Circuit Court for the District of Connecticut, Case File of Isaac Buell, September 1792, National Archives at Boston; Medical Society of the State of New-York, *A System of Medical Ethics, Published by the Order of the State Medical Society of New-York* (New York: William Grattan, 1823), 3; "List of Honorary and Permanent Members of the State Medical Society," *Transactions of the Medical Society of the State of New-York* (Albany: E & E Hosford, 1825), 29-31.

would train themselves in medical jurisprudence and handle all related matters, from the assessment of military conscripts to the examination of physical and cognitive affliction in court. Griffith lamented that most physicians were unprepared to fulfill their administrative duties. “It must be recollect,” he wrote in 1825, “that there are many facts of the most vital importance, whose practical applications are solely confined to the purposes of jurisprudence, and are therefore entirely overlooked in the usual routine of medical study.” He and Beck argued that state-supported doctors “specially charged” with legal medicine would help to alleviate these concerns. Along with others, they urged state legislatures to implement such a system—initially by advocating that New York assign physicians to the position of coroners, political officers placed throughout the region to investigate suspicious deaths. Griffith, Beck, and other doctors hoped that this would be a first step towards greater political and public involvement and recognition for their profession.<sup>301</sup>

Yet widespread endorsement of medical professionalization was harder to achieve than doctors imagined. Before and during the 1820s, most states enacted laws that favored the interests of formally-trained regular physicians—giving medical societies authority over licensing and education, among other matters. Beginning in the late 1820s and continuing until the 1840s, however, states, one after another, began to repeal these laws in favor of a more open medical market. Now untrained healers, whom regular

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<sup>301</sup> Griffith, “Art. III. On Medical Jurisprudence,” 36; Theodric Romeyn Beck and John Brodhead Beck, “Medical Jurisprudence,” *The New York Medical and Physical Journal* 5, 2 (Apr-Jun 1826), 384; Beck, “Annual Address delivered before the Medical Society of the State of New-York, Feb. 6, 1828.” Also see: Mohr, *Doctors and the Law*, 84-87.

physicians disparaged as quacks, could claim the designation of doctor and legally conduct their practices.<sup>302</sup>

For the subset of physicians committed to medical jurisprudence, these changes were devastating. Lawyers and politicians could now summon “irregular” practitioners—from homeopaths to traditional healers—to adjudicate disability and their opinions would be awarded as much weight as those with a conventional medical education. The hopes of cultivating professional reputation through administrative work thus seemed dashed. Public sentiment also turned against regular physicians. As James McNaughton, President of the Medical Society of the State of New-York in 1837, explained, juries now regarded regular doctors with “odium,” “suspicion and disfavor” and sided with their irregular counterparts. In this climate of anti-professionalism, the intentions of Beck and other physicians to appoint formally-trained doctors to governmental positions also became challenging. Although Beck negotiated for a New York state mandate that required coroners to consult physicians in certain cases in 1829, this was the last major political gain that he or others would make towards medical professionalization for almost two decades.<sup>303</sup>

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<sup>302</sup> For more on medical professional efforts and setbacks, see: footnote 16, esp. Starr, *The Social Transformation of American Medicine*, chs. 1-2

<sup>303</sup> Mohr, *Doctors and the Law*, 84-93; James McNaughton, “Annual Address, Delivered before the Medical Society of the State of New-York, February 8, 1837, by James M’Naughton, MD, President of the Society,” *New York State Journal of Medicine* 82, 2 (February 1982), 242-250, also quoted in: Starr, *The Social Transformation of American Medicine*, 58; *Notes on the Revised Statutes of the State of New York: Pointing Out the Principal Alterations Made by Them in the Common and Statute Law and Revised Statutes of the State of New York*.

The challenges that regular physicians faced to their claims to professional status in the 1830s and 1840s, however, mask their successes that they had had and would continue to have in establishing their authority over the civic and legal adjudication of disability. Certainly, beginning in the 1830s, lawyers, bureaucrats, and others often asked both regular and irregular practitioners to evaluate disability claims. In court cases, formally-educated doctors testified alongside all others who professed medical knowledge. Physicians from different sects, such as Thomsonianism and homeopathy, also commonly served in governmental and institutional capacities. When the American Institute selected doctors to judge the category on surgical instruments in the late 1830s and 1840s, for example, they included both regular and homeopathic healers, such as Benjamin Franklin Joslin and John Franklin Gray. Viewing regular physicians' inability to govern the limits of the profession and achieve meaningful political influence during the period, however, obscures the substantial professional advances that they had made since the colonial era. From the assessment of military recruits and pensioners to the selection of beneficiaries for life and health insurance and the determination of insanity in court, doctors were now widely recognized as the rightful and most capable determiners of disability. While in earlier periods, the testimonies of ministers, governmental officials, and everyday individuals were routinely accepted as evidence of incapacity, by the 1830s and 1840s, physicians—of a variety of backgrounds, ideologies, and

competencies—were believed to have specialized knowledge about disability.<sup>304</sup>

Even more, despite the anti-professional environment of the 1830s and 1840s, doctors made important gains in securing authority over the emerging concept of disability. In 1833, the New England Institute for the Education of the Blind began relying on physicians' evaluations to accept state beneficiaries. In 1835, the American Institute appointed doctors, not cabinetmakers, to review inventions for impairment. And in 1841, Barnum's American Museum opened, ushering in an era of greater partnership between showmen and physicians in advertising the shows of atypically-figured performers. Doctors' advances in establishing their oversight of disability continued still. In 1844, the Massachusetts Supreme Court set precedent that "professional men, who have long been conversant with insanity" should determine cognitive incapacity. In 1848, the Surgeon General of the United States Army, rather than the Secretary of War or the new Commissioner of Pensions, assumed the final say over invalid pension evaluation. In addition, throughout the period, insurance societies increasingly relied on doctors to advise them on the ailments of claimants. Regular physicians surely struggled to achieve professional recognition and political influence during the 1830s and 1840s. Nevertheless, in many ways, together with their irregular counterparts, they maintained and even strengthened their command over disability's determination.<sup>305</sup>

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<sup>304</sup> Judges Reports, 1838 and 1840, Records of the American Institute of the City of New York for the Encouragement of Science and Invention.

<sup>305</sup> Commonwealth vs. Abner Rogers, Jr., March 1844, Counties of Suffolk and Nantucket, Theron Metcalf, *Reports of Cases Argued and Determined in the Supreme Judicial Court, Vol.*

Doctors' growing acceptance as the most qualified evaluators of disability, in turn, lent greater authenticity to the political, institutional, and cultural category of disability. When social welfare benefits, legal restrictions, and products related to impairment were first introduced, confusions and contestations about the meaning of disability exposed the ambiguities and imprecision embedded in the new classification. As governmental and community authorities—from district judges to mutual aid society overseers—struggled to define and assess disability, those with impairments gained leverage to negotiate their cases and advocate for their own understandings of incapacity. The turn towards physicians, however, made it more challenging for disabled people to shape the category of disability to their advantage. Largely unfamiliar with medical terminology and practice and unable to incorporate it into their representations of impairment, they were no longer considered experts about their own bodies. Involvement from physicians, such as Beck, instead expanded the power of doctors as well as lawyers, legislators, school administrators, mutual aid society overseers, and prominent producers, all of whom retained the ability to influence doctors and shape the limits of the emerging classification for their own gain. The intensifying management and manipulation of disability by physicians and other authorities ultimately provided greater substance to the category of disability itself. Previously regarded as a flexible, shifting, and controversial designation, disability became a more standardized, medicalized, and significant bureaucratic, legal, institutional, and cultural categorization.

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VII, 500-506; C. W. Bennett, *A Digest of the Laws and Resolutions of Congress Relative to Pensions...* (Washington: Holman, Gray & Co., 1854), 153.

## Conclusion

In March 1839, Congress passed a bill to govern the sixth federal census, scheduled for the following year. With the establishment of categories based on impairment and disability in everything from federal military pensions to community-run mutual aid associations over the past fifty years, it is unsurprising that such classifications featured prominently [Figures 27 and 28]. The enumeration act instructed marshals to count the number of “white” and “colored” people who were “deaf and dumb” and “blind,” the former differentiated by age. In addition, the bill asked census collectors to document the “idiots and insane” of both races and their economic productivity, specifying whether they were at “private” or “public charge.” Per the request of James L. Edwards, the current Commissioner of Pensions, the act also required marshals to report “all persons receiving pensions from the United States for revolutionary or military services.” As Edwards had explained to Secretary of War Joel Roberts Poinsett, pension fraud was rampant and the census was “well calculated to purge the pension rolls” of imposters. By 1839, the federal government was accustomed to characterizing and categorizing citizens according to their perceived physical or intellectual incapacities. They incorporated disability-based classifications into the census readily and easily, the new measures sparking little discussion or controversy.<sup>306</sup>

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<sup>306</sup> For more on the passage of the 1839 enumeration act, see: Patricia Cline Cohen, *A Calculating People: The Spread of Numeracy in Early America* (New York and London: Routledge, 1999), 182-185. H. R. 1138, “An Act to Provide for Taking the Sixth Census of Enumeration of the Inhabitants of the United States,” March 1, 1839, 25<sup>th</sup> Congress, 3<sup>rd</sup> Session; “An Act to Provide for Taking the Fifth Census or Enumeration of the Inhabitants of the United States,” in *The American Annual Register; for the Year 1829-30, Second Edition* (Boston: Gray and Bowen, 1832), 207-210; U.S. House, “Message from the President of the United States, Transmitting a Communication from the Secretary of War Respecting the Importance of Requiring the Officers who may be Employed to Take the Sixth Census, to

Figure 27: "Schedule of the Whole Number of Persons..." U. S. Census Form of 1840. In "200 Years of U. S. Census Taking: Population and Housing Questions, 1790-1990." U. S. Department of Commerce, Bureau of the Census. Washington, DC: U. S. Government Printing Office, 1989. 21.

Make a Return of the Names and Ages of Pensioners," March 3, 1839, 25<sup>th</sup> Congress, 3<sup>rd</sup> Session, Senate Report 282. Categories based on impairment and disability remained a feature of the federal census into the early twentieth century; see: "Census Forms," Ancestry.com (accessed 4 Apr 2016).

Figure 28: "Schedule of the Whole Number of Persons..." U. S. Census Form of 1840. View of Right Third of Schedule.

**State (or Territory) of**

NAME OF TERRITORY OR STATE TO WHICH THE PERSON BELONGS	NAME OF PENSIONER OR MILITARY SERVANT INCLUDED IN THE SCHEDULE	AGE	DEAF AND DUMB, BLIND, AND DEAF AND BLIND PERSONS INCLUDED IN THE FOREGOING			DEAF, DUMB, BLIND AND DEAF AND BLIND PERSONS INCLUDED IN THE FOREGOING			UNIVERSITIES OR COLLEGES
			DEAF AND DUMB		BLIND AND DEAF	DEAF, DUMB, AND BLIND		BLIND AND DEAF	
			Under 14	14 and under 20	20 and wards	Blind	Deaf and dumb	Blind	

When the results of the sixth census were compiled and printed in 1842, however, they sparked yet another nationwide debate about disability. That year, Edward Jarvis, a Massachusetts physician, published an article declaring that, according to the recent census data, the number of “colored” “insane and idiots” in the North exceeded those in the South by “almost a ten-fold proportion.” As he explained, “in the free States there is one lunatic or idiot among every 162.4 of the colored inhabitants. While, in the slave States, there is only one in every 1558 of the colored people.” Jarvis decided that “slavery has a wonderful influence upon the development of moral faculties and the intellectual powers” of blacks.<sup>307</sup>

Although Jarvis retracted his claims two months later—citing errors in the census that had led him to false conclusions—his contention that freedom exacerbated black insanity fueled controversy over slavery and disability. Some Americans, especially those from the South, used the census data to defend proslavery views, arguing that blacks were physically and intellectually unfit for freedom. John C. Calhoun, for example, stated in 1844 that the census showed that freedom hurt “the condition of the African,” as he “invariably sunk into vice and pauperism, accompanied by the bodily and mental inflictions incident thereto—deafness, blindness, insanity, and idiocy.” Other Americans, especially those from the North, instead insisted that the discrepant insanity rates were caused by inaccurate enumeration and

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<sup>307</sup> Edward Jarvis, “Statistics of Insanity in the United States,” *The Boston Medical and Surgical Journal* 27, 7 (Sep 21 1842), 116.

calculation. They urged Congress to re-tally the returns and investigate possible mistakes.<sup>308</sup>

Predictably, physicians emerged as authorities in the dispute whom policymakers and everyday individuals looked to for answers and explanations. Some doctors agreed with Jarvis that the census was incorrectly recorded and tabulated. Samuel Forry, for example, noted that the results were “so extraordinary...that the truth of the data themselves has been called in question.” Nevertheless, Forry posited an alternate theory for the suspect insanity ratios, holding that they might be caused by the North’s “austere climate,” “as the whole constitution of the black is adapted to a tropical region.” Other physicians defended the census results and used them in their research. Josiah C. Nott, for instance, argued that the disputed findings were due to the greater number of mixed-race individuals in the North, who were “know[n] to be shorter lived than the whites or blacks, and probably more prone to insanity.” Still other doctors highlighted the challenges of assessing physical and cognitive capacity, no matter how the census was implemented. As Theodric Romeyn Beck wrote, “it will ever be difficult to

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<sup>308</sup> Edward Jarvis, “Statistics of Insanity in the United States,” *The Boston Medical and Surgical Journal* 27, 17 (Nov 20 1842), 281. Also see: Edward Jarvis, “Insanity Among the Colored Population of the Free States,” *The American Journal of the Medical Science* 7, 13 (Jan 1844), 71. “Mr. Calhoun to Mr. Pakenham, Department of State, Washington, April 18, 1844,” *Proceedings of the Senate and Documents Relative to Texas, from which the Injunction of Secretary has been Removed, Public Documents Printed by Order of the Senate of the United States, First Session of the Twenty-Eighth Congress, Begun and Held at the City of Washington, December 4, 1843, Vol. V* (Washington: Gales and Seaton, 1844), Doc. 341, 52. For more on the 1840 census controversy, see: Cohen, *A Calculating People*, ch. 6; Margo J. Anderson, *The American Census: A Social History* (New Haven and London: Yale University Press, 1988), 26-31; Boster, *African American Slavery and Disability: Bodies, Property, and Power in the Antebellum South, 1800-1860*. For more on Jarvis, see: Gerald Grob, *Edward Jarvis and the Medical World of Nineteenth-Century America* (Knoxville: University of Tennessee Press, 1978).

ascertain the precise number of the insane and idiotic." "While many monomaniacs and those but little deranged will not be enumerated because not considered actually insane--the insanity of others will be concealed by their friends." Furthermore, Beck declared, "many thus included, if deranged at all, are but partially so, and are living quietly and pleasantly with their friends, and capable of supporting themselves by their labor."<sup>309</sup>

As the debate about the sixth census wore on, another group of experts emerged, ready to use their specialized knowledge to resolve the controversy about slavery and insanity and clarify the construct of disability more generally. Statisticians, who had just established the American Statistical Association in 1839, argued that they were best equipped to analyze the data, assess categories of disability, and recommend relevant policy. Initially, there was considerable overlap between the men who studied statistics and those who practiced medicine. Of the fifty-four original members of the American Statistical Association, fourteen—including John Dix Fisher and Samuel Gridley Howe, who had founded the New England Institution for the Education of the Blind—were doctors.<sup>310</sup>

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<sup>309</sup> Samuel Forry, "On the Relative Proportion of Centenarians, of Deaf and Dumb, of Blind, and of Insane, in the Races of European and African Origin, as shown by the Censuses of the United States," *The New York Journal of Medicine, and the Collateral Sciences, Vol. II* (New York: J. & H. G. Langley, 1844), 313; Josiah C. Nott, *Two Lectures on the Natural History of the Caucasian and Negro Races* (Mobile: Dade and Thompson, 1844), 29-30; "Number of the Insane and Idiotic, with Brief Notices of the Lunatic Asylums in the United States," *The American Journal of Insanity, Vol. I* (Utica: Bennett, Backus, & Hawley, 1844), 80. *The American Journal of Insanity* was edited by the "officers of the New York State Lunatic Asylum, Utica." In 1844, Beck was on the board of the institution and the journal; in 1850, he took over as editor; see: Hamilton, *Eulogy on the Life and Character of Theodric Romeyn Beck*, 34. For more on Nott, see: Reginald Horsman, *Josiah Nott of Mobile: Southerner, Physician, and Racial Theorist* (Baton Rouge and London: Louisiana State University Press, 1987).

<sup>310</sup> American Statistical Association, "Constitution and By-Laws of the American Statistical Association: with a list of officers, fellows, and members and an address" (Boston: Perkins &

Statisticians partnered with physicians to investigate the sixth census results. In 1844, the American Statistical Association and the Massachusetts Medical Society together conducted a recount of the insane people in the state. Using the medical society's network of practitioners, they asked contacts in every town to report their insane residents and then compared this data to the census. Upon finding "gross errors," Jarvis and other American Statistical Association members petitioned Congress to correct the enumeration or, alternatively, "discard...and disown...the same." "If the statements here given were the correct results of investigations pursued on a well-digested and uniform plan," the men asserted, "the information would be highly interesting. But it is manifest it cannot be relied on." Jarvis and the American Statistical Association members stressed that medical and statistical experts were needed not only to evaluate the census records, but also to conduct such investigations in the future.<sup>311</sup>

Physicians, now joined by statisticians, continued to assert their authority over the measure and meaning of disability throughout the nineteenth century and into the twentieth. When the federal government conducted the seventh census in 1850, they received advice from both doctors, such as Jarvis and Nott, and statisticians, such as Lemuel Shattuck

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Marvin, 1840); Cohen, *A Calculating People*, 182. Physicians also published statistical texts; Beck, for example, wrote "Statistics of the Deaf and Dumb in the State of New York, the United States, and in various countries of Europe;" "Statistics of the Blind in the United States, as Ascertained by the Census of 1830;" and "Statistics of the Medical Colleges of the United States" all in the late 1830s. "Transactions of the Medical Society of the State of New York," *The New York Journal of Medicine, and the Collateral Sciences* 1, 2 (Sep 1843), 244.

<sup>311</sup> *Medical Communications of the Massachusetts Medical Society, Vol VII, Second Series: Vol III* (Boston: the Society, 1848), 58-91; "Memorial to the Honorable the Senate and House of Representatives in the Congress Assembled," reprinted in *Boston Courier*, May 16, 1844. Also see: Cohen, *A Calculating People*, ch. 6.

of the American Statistical Association. Medical and statistical experts remained involved in the assessment of disability in other ways. The former presided over schools and asylums for people with impairments, while both published treatises on the occurrence of various conditions and their potential for rehabilitation. Doctors testified in court cases about insanity, issuing judgments about the presence and implications of cognitive incapacity. Together with statisticians, they also remained active in mutual aid and insurance associations, advising these companies about the nature and probability of ailment and death. In addition, both medical and statistical experts continued to analyze atypically-figured performers and products to accommodate impairment with their specialized skills.<sup>312</sup>

Physicians' and statisticians' positions of authority in these many venues does not mean that they presided over the constitution of disability without controversy or contestation. During the late nineteenth and early twentieth centuries, insane asylums, medico-legal witnesses, health and life insurance organizations, museums and freak shows, and pharmaceuticals and assistive products all came under attack for exploiting disabled people and the general public. Nevertheless, the categorization and determination of disability remained the purview of professionals. Doctors and statisticians used their authority over disability to strengthen their claims to professional standing. Their growing political and economic influence, in turn, entrenched the classification of disability further still.

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<sup>312</sup> Grob, *Edward Jarvis and the Medical World of Nineteenth-Century America*, 142; *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session, 1850, 21, 1:677; Anderson, *The American Census*, 36-37.

This dissertation has shown how disability emerged in the Early Republic as a significant bureaucratic, legal, institutional, and cultural category—linked to conceptions of labor, social worth, and economic self-sufficiency and increasingly sanctioned by the expert discourse of medicine. While previous scholarship has explored how constructions of race, class, gender, and sexuality developed and changed following the Revolution, the making and remaking of disability has largely been overlooked. This study reveals the complicated and endlessly negotiated processes of creating and regulating categories of disability in diverse contexts—from the provision of governmental social welfare benefits to the policing of the rights of citizenship and the packaging and selling of disability designations in the market.

The constant contestations about the application and implications of disability are central to this story. The construct of disability was not formulated only or even primarily by those responsible for administering state and institutional subsidies or adjudicating disability-based exclusions. Instead, the category emerged as a product of the heated disputes and debates between those claiming or resisting disability and those overseeing its implementation. Disabled people advanced their own understandings of capacity and incapacity, forcing bureaucrats, judges, consumers, and their peers to assess the limits of disability and its political, economic, and social consequences. In most, but not all, cases, those in charge of determining disability turned to physicians for support. Their resulting medically-informed regulations lent greater structure and weight to the classification of disability even though negotiation and resistance from disabled people continued.

The development of the construct of disability in early national America markedly changed the lives and opportunities of all involved in this story. Physicians used their newfound authority over the category of disability to boost their professional standing. At a time when doctors enjoyed little political influence, economic potential, and social respect, serving as a disability specialist and partnering with state officials, attorneys, and powerful institutions provided a means to assert and claim expert status. Bureaucrats, judges, and prominent producers and consumers also gained from the construction of categories of disability. They secured the ability to pressure physicians and to enforce strictures that shaped the emerging classification to their own benefit.

The rise of disability categorizations, however, had mixed results for people deemed to be disabled. Initially, controversies about the assessment and implications of disability provided disabled people with the chance to negotiate their cases and advance alternative conceptions of capacity and incapacity in support of their own agendas. Increased standardization and medicalization, however, limited their leverage. New strictures presented obstacles to be managed and circumvented, while the growing importance of medical discourse made it harder for those without such expertise to defend their unique perceptions of impairment and inability. Some disabled people surely benefited from new governmental and institutional subsidies and services as well as opportunities in the burgeoning marketplace. Many others, however, faced restrictions and exclusions that compromised their political rights and economic potential.

More research is required to flesh out the complex development of categories of disability in the Early Republic and to evaluate their significance in the years following. Scholars, it is to be hoped, will delve deeper into the various contexts explored in this study, revealing more fully how classifications of impairment and incapacity were imposed by bureaucrats, jurists, and institutional managers and negotiated by those both claiming and rejecting the designation. Research about other contexts in which disability was endowed with political and social meaning—from print culture to religion and philanthropy—would also help to provide a more comprehensive account of the changing distinctions and implications of disability during the period. In addition, more work must be done to expand the geographic area examined in this dissertation. The presence, absence, or alternate development of disability constructions in the southern and western states and territories would not only suggest the representativeness of the events in New England and the Mid-Atlantic, but also help to tell a more national story.

In the Early Republic, disability became a meaningful administrative, institutional, and cultural category that gained shape and significance towards the mid-nineteenth century. It influenced the lives of all in its path: those who formulated and regulated its boundaries, those who negotiated and resisted them, those who served as expert witnesses, and these many individuals' families, friends, and allies. No longer the unimagined and unimplemented distinction it was during the colonial period, the category of disability became deeply entrenched in American politics, law, economy, and society.

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### Education

- Ph.D. in History, College of William & Mary August 2016
- Dissertation: "The Constitution of Disability in the Early United States." Committee: Karin Wulf (Chair), Cornelia H. Dayton, Christopher Grasso, Charles McGovern, Brett Rushforth.
  - Comprehensive Exam Fields: Early American History; Modern American History; Gender, Sexuality, and Women's History; and Atlantic World History. 2012
- M.A. in History, College of William & Mary 2011
- Thesis: "Art/Self: Martha Ann Honeywell and the Politics of Display in the Early Republic."
- B.A. in History, Wesleyan University 2005

### Publications

#### Articles

- "Revolutionary War Invalid Pensions and the Bureaucratic Language of Disability in the Early Republic." Special Issue on Early American Disability in *Early American Literature*. (Forthcoming, Spring 2017)
- "Martha Ann Honeywell: Art, Performance, and Disability in the Early Republic." *Journal of the Early Republic*. (Conditionally Accepted)

#### Book Chapters

- "'A Hand for the One-Handed': Disabled User-Inventors and the Market for Assistive Technologies in Early Nineteenth-Century Britain." In *Bodily Commodifications: Rethinking Modern Histories of Prostheses in Anglo-America*, edited by Claire Jones. Manchester University Press. (Forthcoming, Fall 2016)

#### Reviews

- Review of "Bodies at Odds: The Maternal Body as Lived Experience and Cultural Expression in America, 1750-1850" by Nora Doyle. Dissertation Reviews. December, 2014.
- "Construction of a Visual Culture of Disability." Review of *Picturing Disability: Beggar, Freak, Citizen, and Other Photographic Rhetoric* by Robert Bogdan with Martin Elks and James A. Knoll. H-Disability, H-Net Reviews. August, 2013.

## Fellowships & Awards

### External

- American Fellowship, American Association of University Women. 2014-2015
- Andrew W. Mellon Foundation Fellowship, American Philosophical Society, Philadelphia, PA. 2014
- Patricia and John Klingenstein Fellowship, New-York Historical Society, New York, NY. 2014
- Robert L. McNeil Jr. Fellowship, Historical Society of Pennsylvania, Philadelphia, PA. 2013
- Research Fellowship, Winterthur Museum, Garden, & Library, Winterthur, DE. 2013
- Integrating Women's History Scholarship, National Collaborative for Women's History Sites and the National Parks Service. 2010
- Antiques Forum Scholarship, Colonial Williamsburg Foundation, Williamsburg, VA. 2010

### Internal

- Provost's Dissertation Fellowship 2015-2016
- Society of the Cincinnati Prize 2015-2016
- John E. Selby Award for Excellence in Undergraduate Instruction 2014
- Morton Graduate Research Grant 2014
- Arts & Sciences Graduate Research Grant 2013 & 2015
- Provost's Summer Research Fund 2013 & 2014
- Office of Graduate Studies Conference Award 2013 & 2014
- Lyon G. Tyler Department of History Travel Award 2013
- Dean's Prize for Student Scholarship on Women 2011
- Goodwin Scholarship 2009-2014

## Conference Presentations

- "George Webb Derenzy's 'One-Handed Apparatus' and the Publication of Technologies for Disability in Early Nineteenth-Century Britain," Disability and Prostheses: Rethinking Patent Cultures, Centre for the History & Philosophy of Science at the University of Leeds, Leeds, U.K. Sep, 2014
- "Disability in the Early Nineteenth-Century Marketplace," 36<sup>th</sup> Annual Meeting of the Society for Historians of the Early American Republic, Philadelphia, PA. Jul, 2014
- "Disability in the Long Eighteenth Century" Roundtable, 45<sup>th</sup> Annual Meeting of the American Society for Eighteenth-Century Studies, Williamsburg, VA. Mar, 2014
- "The Dis/Abilities of Martha Ann Honeywell: A Case Study in Self Presentation in Antebellum America," Variabilities: A Conference on the History and Representation of the Body in its Diversity, Atlanta, GA. Jul, 2013

- “Revolutionary War Invalid Pensions and the Codification of Disability in Early America,” Society of Early Americanists 8<sup>th</sup> Biennial Conference, Savannah, GA. Feb, 2013
- “Mary Amelia Leavelle’s Photographs: Presentations of Self and Sexuality in the Twentieth-Century South,” American Historical Association 127<sup>th</sup> Annual Meeting, New Orleans, LA. Jan, 2013
- “Extraordinary Bodies and Minds: Itinerant Artists with Disabilities in the Early Atlantic World,” Transporting Minds and Bodies: Eighteenth and Nineteenth Century Travel, University of Michigan, Ann Arbor. Oct, 2012
- “Art/Self: Martha Ann Honeywell and the Politics of Display in the Early Republic,” Chesapeake American Studies Association Annual Conference, Georgetown University, Washington, DC. Mar, 2010

### **Teaching Experience**

College of William & Mary

- HIST121: American History to 1877  
Received the John E. Selby Award for Excellence in Undergraduate Instruction  
Evaluations: Quality of Instructor 4.72/5; Quality of Course 4.5/5 Fall 2013
- HIST192: Global History since 1500 (Teaching Assistant, 6 Sections) 2010-2011

Invited Lectures

- “Disability and Law in American History,” History 290: American Legal History, Columbia College. Oct, 2014
- “The Life and Works of Martha Ann Honeywell,” American Studies 208: Introduction to Dis/Ability Studies, College of William & Mary. Sep, 2012
- “Gender in Popular Culture,” Keio University / College of William & Mary Cross-Cultural Collaboration. Aug, 2012

Keio University / College of William & Mary Cross-Cultural Collaboration

- Assistant Director 2011
- Classroom Instructor 2010

North Point Methodist Primary School, Hong Kong, China

- English Language Teacher 2005-2006

### **Museum Experience**

- “Teaching with Objects” Professional Development for Monticello Guides, Thomas Jefferson’s Monticello, Charlottesville, VA. 2012
- Lead Student Curator, “Merging Souls: Arts of Devotion in Latin America,” Muscarelle Museum of Art, Williamsburg, VA. 2010

- Curatorial Assistant, Department of Prints, Maps, and Paintings, Colonial Williamsburg Foundation, Williamsburg, VA. 2009-2010
- Museum Educator and Saturday Academy Coordinator, Museum of the City of New York, New York, NY. 2007-2009
- Intern Educator, Brooklyn Museum, Brooklyn, NY. 2006-2007

### **University & Departmental Service**

- Co-creator and organizer, Historian's Craft Lecture Series 2013
- History representative, Dean's Advisory Cabinet 2013
- Secretary, History Graduate Student Association 2010-2012
- Creator and administrator, History Graduate Student Resources Website 2010-2012

### **Professional Memberships**

- American Historical Association
- Society for Historians of the Early American Republic
- Society of Early Americanists
- Society for Disability Studies
- Disability History Association
- American Historical Association's Disability Mentorship Program

### **References**

- Cornelia H. Dayton, Professor of History at the University of Connecticut, [cornelia.dayton@uconn.edu](mailto:cornelia.dayton@uconn.edu)
- Christopher Grasso, Professor of History at the College of William & Mary, [cdgras@wm.edu](mailto:cdgras@wm.edu)
- Brett Rushforth, Assistant Professor of History at the University of Oregon, Adjunct Associate Professor of History at the College of William & Mary, [bhrushforth@wm.edu](mailto:bhrushforth@wm.edu)
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