INTRODUCTION

Questions of belonging rest at the heart of the modern liberal democratic state. What does belonging mean? Who belongs? Does belonging depend on there being others who do not belong? What is their relationship to the polity? Does it matter what the basis for belonging is, what the defining characteristics of belonging are? Who decides? What does law have to do with it? The answers to these questions are critical in establishing who can make claims on the polity and who cannot; on relationships among those who live in a polity; and in making a population a people. They highlight, what I call, "borders of belonging." Though borders of belonging have been fundamental to the human condition throughout history, they are of particular significance in the modern world and especially to the modern liberal democratic state with its assumptions of the sovereign individual, universal equality, and the authority of the rule of law.

This book traces the borders of belonging at a particular, formative moment in the long history of the development of the modern liberal democratic state: the nineteenth-century establishment and consolidation of the United States. The language of the Declaration of Independence and the preamble to the U.S. Constitution expressed a powerful vision of the fundamental right to freedom, liberty, and equality. Looked at one way, that vision was incrementally

transformed into a lived reality for a broader and broader number of Americans over the course of the long nineteenth century.[1] The American Revolution transformed subjects into citizens; between the 1820s and the 1840s, states removed property qualifications for voting, extending the franchise to most white men; the 1860s brought freedom to the roughly four million Americans held in chattel slavery and a constitutional revolution in individual rights; married women's property reform and ultimately suffrage in 1920 gave women a fuller individuality; and millions emigrated to America's shores and became citizens. One can look at this history and believe in some fundamental way in America's liberalism.

And yet, taking the story as a whole, one cannot escape a different narrative. From the outset, personhood, citizenship, and nation were imagined in abled, racialized, and gendered terms: able white men alone were fully embodied legal persons, they were America's "first citizens," they were the nation. Able white male legal authority was fundamental to the very nature and meaning of nineteenth-century American law in both conceptual and constitutive terms. It created law's borders; it defined belonging. As this suggests, the universal human legal person imagined by liberalism and equally imbedded in capitalism was in fact highly particularized. More important, however much change there was on the surface over the course of the long nineteenth century, the borders of belonging never escaped their initial imagining. Abled, racialized, and gendered identities – simply assumed at the beginning as the foundation or justification for the granting or denial of personhood and citizenship – came to be self-consciously embraced, marked in law, and manipulated, protecting able white male privilege not simply up to the Civil War, but after it as well. In turn, the founding assumptions that imagined legal personhood and from it citizenship in abled, racialized, and gendered terms fundamentally shaped

[1] The term long nineteenth century here refers to the period from 1789 through the 1920s. I explain why I use the long nineteenth century as the frame of reference later in the introduction.

the development of the American legal and constitutional order for the twentieth century.

Law, Personhood, Citizenship, and the Borders of Belonging

Concepts are useful because they offer a mental symbol, an evocative explanation that captures an underlying symmetry in what might otherwise appear to be without pattern or form. With this in mind, it seems advisable to provide greater explanation of what I mean by and the relationship among "personhood," "citizenship," "borders of belonging," and law's centrality to all three.

The free, self-owning, rights-bearing, sovereign individual stands at the foundation of the modern liberal state. Scholars have used a range of terms to describe the self-owning individual – "possessive individualism," "the liberal individual," or, as I do here, simply "personhood" or "legal personhood." *Personhood*, as I use the term, rests most fundamentally on legal recognition and protection of *self*-ownership, that is, of a right to one's person, one's body, and one's labor. Other elements of personhood stem from this starting point: a right to freedom of movement, to marry, to procreate (or not), to be free from physical abuse or coercion without due process of law, to contract, to inherit and devise property, and so on. Protection of these basic rights of personhood requires, in turn, basic civil rights, including the right to sue and be sued, the right to suffrage, and the right to serve on juries and be eligible for elective office. These characteristics bring us to citizenship.

Citizenship is often defined in terms of a set of formal rights and obligations, for example, the right to sue in national courts, the right to the protection of the state when traveling abroad, and so on. But what such a definition fails to capture is the reflexive relationship in the liberal state between personhood and citizenship. Citizenship and personhood are interdependent. Thinking about citizenship in this way enables us to see how one might formally be a citizen and even

enjoy particular rights and share obligations associated with citizenship and yet not enjoy effective citizenship because one is not invested by law with full personhood. Moreover, the extension of citizenship could itself be or become an instrument of authority and subordination.

Several decades of scholarship have accustomed us to thinking of race and gender as constructed in part through law. What I am suggesting is that we think more generally of how law *constructs*, that is, lends consequence to elements of individual identity – race, sex, age, ability, religion, birth status and place of birth, marital status, and so on. Thinking in these terms helps us to keep in mind that elements of individual identity do not have any set meaning. They are given meaning socially, culturally, and, most importantly here, legally. They are thus set apart; they are given borders. The meaning attached to these characteristics in turn is articulated to personhood, citizenship, and nation, and through them to the ability to both substantively participate in society and to have a corresponding legal status as someone who can participate in society. Law in this way has been fundamental in the construction of personhood, citizenship, and hence borders of belonging. As this suggests, the term *borders of belonging* offers a conceptual tool for describing the commonality in the meaning or consequences attached to ability, race, and gender that otherwise appear distinct, different, or particular.

There are other terms I might have used in place of "belonging"; dignity, capacity, and standing all capture part of what I am after here, but each only incompletely and with troubling elisions. "Belonging," and especially "borders of belonging," allows me to get at the intersections and interdependence of the individual, relationships between/among individuals, and the space of the individual within and as representative of the nation. As I have conceived the term, *borders of belonging*, both borders *and* belonging have a spatial (bodily and territorially) and figurative meaning. In a territorial sense, "borders" refers to the borders of the nation. But it likewise refers to the borders between individuals and the state, and between different levels of governing authority. In the case of the United

States, for example, "borders," in this sense, refers to a complex set of relationships among individuals, states, the federal government, incorporated and unincorporated territories, and Indian tribes. "Borders" also though refers to physical and psychic personhood (self-ownership). The term "belonging," likewise, refers to self-ownership or belonging to oneself, as well as meaning "to be a member of" or "to be part of" as in citizenship. Tracing borders of belonging reveals the ways in which recognition of personhood establishes the preconditions of effective citizenship.

Part of the value of borders of belonging as a conceptual tool is its power to expose instances in which belonging for some is achieved through the subordination or exclusion of others. No figure in the liberal state was self-defining; privilege and subordination, as the term suggests, were interlocked and interdependent. Seen in this light, both "belonging" and "borders" can be charged negatively, as well as positively. So, for example, in addition to its positive valence, belonging also connotes, less positively, the realities of "belonging to" as in legal relationships of ownership, authority, and/or protection and subordination (e.g., master/slave, master/servant, husband/wife, guardian/ward). Even in its positive sense – that of being a part of – belonging can be a negative tool. In the nineteenth century United States, state recognition of freedmen's and freedwomen's right to marry and the sanctity of their familial bonds in the aftermath of emancipation and ratification of the Thirteenth Amendment following the American Civil War, granted African Americans two of the most fundamental elements of personhood, yet simultaneously proved a tool for forcing African Americans to conform to a particular definition of family and a basis for expropriating the labor of those who did not. So too with "borders." The Dawes Act, for example, which gave the U.S. president authority to divide tribal lands and allot 160 acres to each family and smaller plots to individuals, brought American Indians closer to full-fledged U.S. citizenship. It also was intended to and effectively did dispossess them of their tribal sovereignty and cultural identity. "Belonging" and "borders" came together

in this negative sense in the nonconsensual reproductive sterilization of those institutionalized for mental and congenital disability in the early twentieth century United States. These examples challenge a reading of "borders of belonging" in terms simply of a positively charged interior and a negatively charged exterior, a reading that holds out the promise of a progressive, liberal narrative: as the borders of belonging expand, those outside are brought inside. Finally, the concept is productive for helping us visualize ways in which exclusion from borders of belonging, voluntary and involuntary, may offer benefits.

In highlighting the legal construction of personhood and citizenship, I do not mean to suggest that individuals' only source of selfhood, personhood, or belonging is through law; in fact, other cultural sources of selfhood and belonging become especially important for those marginalized or subordinated by borders of belonging established through law. It is to say that with the creation and expansion of the modern liberal state, law has operated as an authoritative discourse, that it fundamentally shapes individual identity and rights, relationships among individuals, and the relationship of the individual to the state. And while the particulars have differed over time and space, borders of belonging have been integral to the modern liberal order.

Categories of Belonging

Even if thinking about race or gender as elements of legal personhood is new to readers, recognizing that privilege and subordination rested along axes of race and gender in American history most certainly is not new. Several decades of scholarship, moreover, have accustomed us to seeing race and gender (and, more recently, sexuality) as analytical categories. We are less accustomed to thinking of ability and disability as equally critical historically in shaping privilege and subordination. I argue here that ability, no less than race and gender, was fundamental to personhood and citizenship, that it was a constituent element of the borders of belonging

from the nation's founding and that it remained so throughout the long nineteenth century. Fundamental rights of personhood, including freedom of movement, immigration, the right to contract, to devise one's property, to marry, to procreate, even the right to be in public depended on individual capacity, on being defined in law as "able." Elements of civic personhood – the right to testify, jury and military service, suffrage – likewise were limited to the "able."

Understanding the fundamental nature of ability in shaping the borders of belonging requires letting go of our long-established conditioning to think of disability in medical terms. There were most certainly individuals who were deaf, blind, and crippled, who suffered from epilepsy or who suffered from varying degrees of mental incapacity. Just as in thinking about sex, skin color, and heredity, it is not the characteristic, but the *legal* significance, the legal disability (or in the case of ability, the legal capacity) attached to the characteristic that must be denaturalized and historicized. What counted as evidence of mental capacity and incapacity too must be historicized. Nineteenth century Americans correlated epilepsy with feeblemindedness. Elizabeth Ware Packard's refusal to submit to her husband's authority provided the foundation for her commitment in 1860 to a state insane asylum where she would spend the next three years of her life against her will. Poverty coupled with behavior that challenged gender or other social norms could and regularly did translate into labels of feeblemindedness and idiocy that would justify placement in a state facility for the feebleminded.

The work we have to do to shake the sense that physical/cognitive abilities and disabilities are different from sex and race helps us to more fully enter into and understand the mindset of the nineteenth century. In the nineteenth century, there was a deep correlation between gender, race, and ability. White men were assumed to have capacity, to be able, unless proven otherwise; for women and racialized others the beginning assumption was the reverse. Medical and legal scholars (by definition white and male) understood the incapacity

or disability of women ("the sex") and racialized others as marked on their minds and bodies as certainly as was that of the "feebleminded," the epileptic, the "cripple," and the "idiot." Think, for example, of justifications for women's exclusion from civic society on the grounds, in John Adams's words, that "their delicacy renders them unfit for practice and experience in the great business of life, and the hardy enterprises of war, as well as the arduous cares of the state.... [T]hat nature has made them fittest for domestic cares."[2] Think also of justifications for slavery based on Africans' asserted mental inferiority and physical adaptedness for field labor. As historian Douglas Baynton notes, "Disability has functioned historically to justify inequality for disabled people themselves, but it has also done so for women and minority groups."[3] The difference of each of these groups – whether of ability, race, or sex – from able white men was the foundation for denying them through law equal rights of personhood and citizenship.

Each category here – male, female, white, nonwhite, abled, disabled – combines individuals marked as certainly by their differences as by their shared identity. What I wish for the reader to see is that law played a fundamental part in creating shared identity, that it did so by investing elements of identity with legal consequences of inclusion and privilege or exclusion and subordination, and that the inclusion and privilege of some, in part, was defined by and depended upon the exclusion and subordination of others. Deep differences of class and religion divided able white men at every point in the nineteenth century United States, but law created a shared identity rooted in ability, race, and gender that cut across, bridged these differences. Able white men's shared identity as heads of household provided the foundation for

[2] John Adams to James Sullivan, Philadelphia, May 26, 1776, reprinted in *The Feminist Papers: From Adams to de Beauvoir*, ed. Alice S. Rossi (Boston, 1988), 13–14.

[3] Douglas C. Baynton, "Disability and the Justification of Inequality in American History," in *The New Disability History: American Perspectives*, eds. Paul K. Longmore and Lauri Umansky (New York, 2001), 33.

their shared civic identity as voters, jurors, and citizens. Each sphere of capacity was the product of law and each reinforced the other. Able white men's capacity, their sense of self, their independence was expanded materially and psychically by the authority law gave them over others – wives, children, servants, slaves, wards.

Just as seeing the way in which law accorded personhood and citizenship on the basis of ability, race, and gender requires looking past the differences that divided able white men, seeing how law denied personhood and citizenship requires looking across differences among women, among people of different racial backgrounds, among people with a range of disabilities. Not all women were equally subjects of law. There were women who were free and women who were enslaved, women of every race, women who were formally citizens and those who were not, single, married, and widowed women, women who were mothers and those who were not, women who were able and those with mental and physical disabilities. These differences mattered in daily life and law. Yet, to acknowledge that enslavement, race, marital status, citizenship, and ableness shaped women's legal status should not let us overlook that women by virtue of sex shared a set of legal disabilities and that men's independence rested on women's legally structured dependence. Moreover, within the qualities that divided women, sex shaped the law in form and practice so that women were treated differently from men who shared the same qualities. As a matter of law through most or all of the long nineteenth century, women could not vote; a married woman had no right to her labor or to her body; the category of exclusion "likely to become a public charge" targeted single women; "feebleminded" women were the special targets of sterilization laws, and so on.

The same point applies for race. I use the term "racialized others" to refer collectively to the many diverse tribal nations that peopled the continent; slaves, free blacks, freedmen and freedwomen; Chinese, Japanese, and other Asian immigrants, as well as Chinese-, Japanese-, and other Asian-Americans; Mexicans who became U.S. citizens by virtue of

the Treaty of Guadalupe-Hidalgo; Mexican-Americans who became citizens by virtue of birth in the United States; and Mexican immigrants. And so on. These groups did not share an identity any more than all women shared an identity. Nor were they identified in law as a single group. Recognizing these differences must not, though, obscure the fundamental fact that law *made* skin color and heredity the foundation for personhood and citizenship. My use of the term "racialized others" rather than "race" recognizes just this: race is constructed. Moreover, individual racial groups – African Americans, the Chinese, and so on – in part developed a group identity in the United States by being marked in law as a group.

The same was true with the category of disability. While there were terms used to speak of disabled persons as a group ("defectives," the "unfit," etc.), there was not a shared or group identity that crossed disability categories. I use "disabled persons" as a legal category referring collectively to those who in the nineteenth century were variously labeled "cripples," "idiots," "the insane," "the feebleminded," "the blind," "the deaf," "epileptics," "defective," and "unfit." While some individual groups (the blind, the deaf) developed a group identity over the course of the nineteenth century, they most certainly did not consider themselves like others who were labeled defective. The same could be said, as I have suggested, of race and sex. Laws relating to skin color and heredity targeted groups by particular racial categories. And individuals of different racial groups did not, in the nineteenth century, share cross-racial identity. So, for example, black men in San Francisco in the 1860s sought to have the testimony ban barring blacks from testifying against whites eliminated from the state constitution; they did not make common cause with Chinese persons who were also banned from testifying against whites. It was only beginning in the mid-twentieth century, largely embedded in Fourteenth Amendment Equal Protection analysis, that "race," then "sex," and most recently "disability" became unitary *legal* categories.