Project
MUSE®
Scholarly journals online

Susan Schweik

Begging the Question: Disability, Mendicancy, Speech and the Law

In this essay I will analyze some court cases in which disabled people demanded re-reading of the legal framing of their bodies and voices in American begging law. My aims here are twofold. First: precisely because the history of begging and the history of disability have so long been practically synonymous (Garland-Thomson 35), the twentieth-century disability rights movement formed itself to a significant extent by developing narrative alternatives to and repudiations of the dynamics of mendicancy. So, for instance, a participant in the landmark Section 504 disability rights demonstration in 1977 told a reporter: “We’ve been begging for a long time. Now we’re demanding” (Treanor 76). Similarly, activist lawyer Robert Burgdorf, writing of the Americans with Disabilities Act in the Harvard Law Review in 1991, invoked a movement slogan: “You Gave Us Your Dimes, Now We Want Our Rights” (Burgdorf “The ADA” 426). This urgent project of rights-seeking has led to a radical forgetting of the figure of the beggar in disability history. But the beggar carries a reminder of something crucial: disability subjection in the United States is deployed and embedded, ideologically and structurally, in classed (as well as gendered and racialized), capitalist social relations. In the history of begging, as (almost?) everywhere, “disability history” and “poor people’s history” profoundly intertwine. Second: legal approaches to the figure of the disabled beggar illuminate problematic narratives often applied to all disabled people, even those who seem to be placed in positions utterly different than the mendicant (such as the rights-demander, the hard-worker, the professional, the sheltered child, and so forth). In this case study of begging law a broader principle becomes clear: the law has persistently depoliticized disabled people (and disabled bodies, and disabling environments), in ways that disability movements and disability studies today are still striving to counter.

Susan Schweik is Associate Professor of English and co-director of the Disability Studies program at the University of California at Berkeley.

NARRATIVE, Vol. 15, No. 1 (January 2007)
Copyright 2007 by The Ohio State University

I am at work on a scholarly history and analysis of the widespread late nineteenth-century urban law barring from public view anyone "who is diseased, maimed, mutilated or deformed in any way, so as to be an unsightly or disgusting object." This municipal ordinance has come to function as a kind of literal urban legend in disability studies—a narrative about disability in the modern city.[1] It is often cited, without footnotes, as "City of Chicago Ordinance, 1911." But the first appearance of the ordinance that I have found was in San Francisco in 1867, and many cities across the country, over a span of fifty years, put it into their codebooks.[2]

The ordinance seems to have been welcomed particularly from the 1880s on in western and particularly Midwestern cities with strong, networked cultures of reform, towns bound to each other and the rest of the nation by railroad ties. Its zone extended eastward, too. The state of Pennsylvania passed a state version of the law in the early1890s. Some New Yorkers, inspired by Pennsylvania, made an unsuccessful attempt to get a city ordinance passed in 1895.[3] Often called the "ugly law," the law is more accurately labeled the "unsightly beggar ordinance," for it emerged always, and was usually applied, in the context of crackdowns on mendicancy. The so-called ugly laws had an economic foundation in anti-begging laws inflected by categories of gender, ethnicity, and race.

I am still going to call my subject the "ugly law" here, partly because the law *was* ugly, partly for the provocative resonance of the term, and partly to honor the coining of the phrase by Robert and Marcia Pearce Burgdorf, who uncovered the ordinance in a landmark treatise on disability law in 1974 (Burgdorf and Burgdorf 855). A municipal librarian in Chicago insists that the ugly law is an urban legend. But his archives contain the ugly law's traces. The law did exist. What does not exist, as far as I know, is a single trace of a legal challenge to the ordinance.

There were, however, other legal challenges by disabled people to the begging stories told about them. Take, for instance, the 1911 effort by George Gray, the "legless newsboy of Times Square" who sued influential reformist James Forbes after Forbes boasted in print that his charitable work had induced Gray to "lead an honest life" and had converted him from a crippled beggar to a self-respecting peddler. Forbes had described Gray in print as the very type that needed charitable intervention: "the runaway boy who goes on the road to see the world, lost both legs while a tramp; returned to New York and became a street beggar." Forbes' article, co-written with Silas McBee and published in *The Churchman*, an Episcopal church organ, held Gray forth as a model of successful reform under the auspices of modern scientifically organized charity: "Induced to lead an honest life under the auspices of the National Association," Gray now, Forbes boasted, "maintained himself honorably."[4] In a similar vein, Forbes' obituary in the *Times* described his work setting up "scores of crippled beggars…in self-respect as newspaper vendors" ("The Late James Forbes").

George Gray, however, did not need to derive his self-respect from James Forbes; he had no desire to be held up as organized charity's poster newsboy, and he objected to the insinuation that he had ever lacked "a reputation for honesty and integrity." He refused, in short, to be made for one moment into an unsightly beggar. His libel case against Forbes and McBee was fought through multiple appeals (Gray

v. Forbes). Gray's difficulty contesting Forbes' interpellations is compounded by the *New York Times* coverage of the case, which erroneously reports his name—not as George but James, Forbes' own first name ("Legless Newsboy Sues").

But let us turn from the subject of libel to consider the place of disability legends in the history of legal appeals directly involving begging law. "It is obvious," an Ohio judge wrote in 1921, upholding the conviction of a blind man found guilty of begging, "that if such an ordinance included the blind only, its unconstitutionality would not be questioned"(Lefever v. City of Columbus).[5] This judge would presumably have had no doubt, therefore, about the illegality of the ugly law, and yet no one—not him, not anyone, not in his own town, which had enacted and enforced the ordinance, or anywhere else—no one I know of sought grounds of any kind to challenge the constitutionality of the unsightly beggar ordinances in court. Arguably, Pennsylvania's state version of an ugly law violated the Fourteenth Amendment, depriving disabled citizens of liberty and abridging their privileges and immunities, but if so, no one noticed. Partly because, to a significant extent, the notion of the citizen presumed an able body; partly because the culture understood disability as the literal opposite of liberty, privilege and immunity; and probably primarily because the measure was generally regarded as protective and benevolent, no analytic framework placing ugly law in the light of the U.S. constitution emerged.

Disabled people did occasionally manage to take procedural objections to their arrests for begging to appeals courts. Let's loiter in Pennsylvania a while, since the state's court records offer multiple examples (Pennsylvania seems to be an epicenter for shifts and tremors in the terrain of the disabled vagrant and beggar), and since those cases clearly illuminate the contradictions embodied in unsightly beggars as cities and courts construed them. One pertinent legal case found its way to a higher court level from Philadelphia in 1909. The man who appealed his sentence was arrested not for violating an ugly law but simply for vagrancy, and he did not challenge vagrancy law per se. General vagrancy and/or nuisance laws were often were called upon to achieve the same immediate ends as the unsightly beggar ordinances, whether or not ugly laws existed in a given jurisdiction. It may well be the case, too, that blind people like the plaintiff in the 1909 case were not perceived as persons exhibiting "deformities," the particular category demarcated by Pennsylvania's 1891 state ugly law.

In the case in question, Burnside v. Superintendent of House of Correction, a blind Philadelphia man named Charles Burnside had been "arrested upon complaint of Reserve Officer Morrow, charged with begging in the street, and after a hearing on May 17, 1909, before D.S. Scott…was committed by the said magistrate to the house of correction for a period of three months." The next day Burnside filed a petition for a writ of habeas corpus, arguing that the committing magistrate had not stated formally that he was found guilty in the court transcript and therefore that he was improperly confined. A week later the higher court affirmed Burnside's charge that "the transcript of the record of the magistrate in this case is defective." For a moment, Burnside had won his case. Since all the original witnesses against Charles Burnside had gathered again for the appeal hearing, however, the court immediately proceeded to hear testimony and rule itself on whether Burnside was in fact guilty as

charged. The summary of their decision reads as follows: "Where blind man, able to earn $6 per week in blind man's home of which he had once been inmate, received aid from charitable society and went on streets to beg by attracting public attention by playing small hand organ and exposing tin cup to hold alms, he is vagrant within meaning of Act of May 8 1876, P.L. 154, 18 P.S. 2032–2042, and liable to commitment to house of correction."

Because Burnside appealed his case, we have a fuller record of what happened in court than cursory (and often no longer extant) city records yield for proceedings against unsightly beggars at the petty municipal level. Much of what happened, no doubt, was typical. The justices took pains to assure the public that they were not pitiless: "The great affliction of the relator appeals most strongly to us, as to every person, but our sympathy for this affliction may not be allowed to influence our judgment as to the quality of his act." This kind of rhetoric, in which the court demonstrably steels itself against its sentimental impulses, occurs too in a case in Columbus in which a man argued that his blindness should exempt him from begging prohibitions: "As an expression of human kindness, society may be reluctant to exclude the worthy blind from begging when in distress or in need, but…[i]f it is legal for a blind person to beg, it is legal for any person to beg, and if all are permitted to beg social conditions sink to the level of the tribe, our institutions disintegrate, and the government fails in those purposes for which it is organized"(Lefever).

The persistent language of affliction in the Burnside ruling is supplemented by portrayal of Charles Burnside as nonproductive (and hence "vagrant"): "It did not appear from the testimony, nor was it pretended, that the relator is a musician or has had any musical training….That which he was doing can in no sense be construed as work or labor, nor can it be properly or truthfully said that the sounds produced by the instrument which he was playing, as described in the testimony, were intended either for the education or the entertainment of the public." The presence of an institution for the blind tipped the balance against Burnside; the prosecution's final witness, George W. Hunt, a superintendent of the Pennsylvania Working Home for Blind Men, testified that Burnside had at one time been an inmate there, employed in the broom-making shop, and could be readmitted there at any time. (Burnside was not, however, remanded to the custody of Mr. Hunt but rather returned to the penal House of Corrections.)

Why did Burnside prefer life as a hand organ player who lived at No. 3815 Pearl Street and begged on 8th Street in Philadelphia rather than as an inmate of the Working Home in the same city? If he testified on his own behalf, his words were not recorded. A brief reference by one prosecution witness to Burnside's family on Pearl Street suggests one possible reason. Choosing domestic life over segregated institutionalization, Burnside had stressed to others that he had a family to support.

Charity Organization Society officials played key roles in incarcerating Burnside. Not one but three Charity Organization agents made a point of coming to Burnside's habeas corpus hearing to repeat the same story. Burnside had approached the Philadelphia COS after first being ordered off the streets by the police a month before his arrest, in early April. He had told them he "would have to have help," and the society had given him a total of $38.25 over the course of the next month and had

delivered coal and groceries to the family on Pearl Street. In return Burnside had promised "to remain off the streets," but still the COS officers had seen him "on the street, playing his mechanical instrument…and had seen a number of people drop money into the tin cup which he exhibited for the purpose." Paradoxically, the facts that might have supported finding Burnside a "deserving" case—his eligibility for COS assistance and qualification for placement in a home for blind men—weighed strongly against him, making him, in the court's view, a particularly flagrant and undeserving common beggar.

As contradictions between and within state and municipal laws illustrate, disabled beggars continued to present insoluble riddles for the state of Pennsylvania and the city of Philadelphia. Sometimes they functioned as exceptions to the rule; sometimes, as the rule's targets; sometimes both at once. On the one hand, the 1887 book of laws and ordinances in Philadelphia stipulated that ordinances banning vagrancy and begging "shall not apply…to any blind, deaf, or dumb person, nor shall it be applicable to any maimed or crippled person who is unable to perform manual labor" (*Digest* 461). Was this law "better" for disabled people than the ugly law? Not necessarily; it assumed disabled people in—consigned them to—the role of beggar, particularly deaf and blind people, whom it understood as categorically incapable of working. (The proviso also exempted women and minor children from arrest for criminal begging, in an effort to protect all three types of dependence.) Ableism runs as deep in permitted-begging as in anti-begging currents in American culture. It can be said for it, however, that Philadelphia's exception sought to diminish rather than increase official harassment of disabled people who begged, and that it did not deny them the street, that one "arena of society," as Andy Merrifield puts it, "not occupied by institutions" (87). On the other hand, the broader state of Pennsylvania enacted the only state ugly law in 1894, prohibiting "the exhibition of physical and mental deformities…for the purpose of soliciting alms."

The state's legal history offers conflicting evidence about who was barred from doing what at the point where disability and begging intersected, conflicts fought out in the courts but never settled in the beggar's favor. Consider the case of Thomas M. Thompson. Thompson is described in an appeals court narrative as a blind man who "day after day placed himself upon" the streets of Philadelphia "for the purpose of begging…calling the attention of the passers-by to his pitiable condition by playing on a small hand organ…. In this way he made his living." Almost certainly influenced by his predecessor Charles Burnside (chances are high that they had encountered each other in the Pennsylvania Working Home for Blind Men), Thompson filed an appeal in 1914 attempting to overturn his conviction for vagrancy and his sentence of three months in the House of Correction. He appealed on two grounds: that the magistrate who committed him had failed to specify that his sentence included not only imprisonment but also hard labor, work he could not perform, and that as a blind man he was not legally subject to penalties for vagrancy.[6] Thompson's lawyer argued in his defense that an Act passed by the Pennsylvania legislature in 1879 had specified that "[t]he blind and crippled are exempt from prosecution." The appeals court judges disagreed with this reading of the legislative record, ruling, inexplicably and mercilessly, that the fifth section of that act "provides, it is true, that the act shall

not apply to certain persons mentioned therein, including those who are blind, but it does not exempt those persons from the prohibitions contained in other statutes."

The Act of April 30, 1879 (P L 33), titled "To define and punish tramps," specifies clearly in the fifth section, in language echoing the Philadelphia city ordinance passed two years earlier, that "[t]his act shall not apply…to any blind, deaf, or dumb person, nor shall it be applicable to any maimed or crippled person who is unable to perform manual labor" (*Laws of the General Assembly*). The disagreement between Thompson and the appeals court judges hinged on interpreting the relation of the main clause to the subordinate clause of the final part of this sentence. Hence Thompson's emphasis on his inability to do hard labor. Were "blind, deaf and dumb persons," or "maimed or crippled" persons, categorically unable to perform manual work, or not? The line in the Act of April 30 is ambiguous. It seems to suggest, with its "nor shall" division between "blind, deaf and dumb" on the one hand and "maimed or crippled" on the other, that *all* blind persons are exempted but that "crippled" persons will be dealt with on a case by case basis. The appeals court chose to ignore or override this reading. "The act does not apply" to Thompson, the judges ruled, and yet somehow he was "not exempt"; here is the classic double-bound position of the disabled person, to whom ordinary law does not apply but for whom nonetheless no exemption is granted.

Pennsylvania lawmakers were clearly uncertain about what to do about unsightly beggars. Anti-begging laws were designed to punish what Amy Dru Stanley succinctly calls "the withholding of labor from sale," but since people we now call disabled were often understood categorically to be those people unable to work, they had, by definition, nothing to withhold (Stanley *From Bondage to Contract* 262). Their presence in the streets significantly troubled cultural adjudications of worthy or unworthy dependence. Defined simultaneously as those who could not contract for work and those who refused to do so, unsightly beggars posed a particularly knotty social problem (one resolved primarily by the mechanism of institutionalization, which both Thompson and Burnside resisted).

The blind vagrant in particular did hard representational labor in the annals of Pennsylvania law, caught in a tangle of conflicting significations: as the one kind of needy person who cannot work and therefore cannot help but beg, a human "exemption"; as the one kind of ungrateful beggar who disgusted the most, a human eyesore. It is unsurprising, therefore, that two rigorous challenges to the core dynamics of ugly law emerged from the mass of blind beggars. Thompson's protest against the hard labor provision of Pennsylvania tramp law struck at the heart of a major social contradiction. Stanley has shown how Northern anti-begging laws enacted after the abolition of slavery—often pushed by the same COS leaders who had been ardent abolitionists—imposed with no compunction "forcible labor as a punishment for dependence" (*From Bondage to Contract* xiii, Hartman 138). Thomas Thompson's challenge constituted a potential landmark case. Instead it vanished from the legal annals, and Thompson went to prison.

In the broader legal arena, where we would find whatever formal principled defenses occurred for people like Thompson, disturbingly little opposition shows up on record. The archive of nuisance law yields evidence of objection to subjective

assessments of unsightliness, but only in regards to property, not persons: "The law will not declare a thing a nuisance because it is unsightly and disfiguring…nor because it is unpleasant to the eye and in violation of the rules of propriety and good taste…. No fanciful notions are recognized. The law does not cater to men's tastes nor consult their convenience merely" (Woodstock Burying Ground). "It is quite clear that the law does not recognize any legal right in any one to… maintain that an unsightly or ill proportioned edifice is a nuisance because it offends his eye, or his too cultivated taste" (Stotter). Marshalled in defense of cemeteries and piggeries, "unsightly erections" and "unsightly gulches," "appearances" and "incumbrances," spite-fences and cars driven on Sunday, this principle was applied to "things" declared nuisances but not to human beings.

Long trails of case law contesting general municipal begging, peddling and vagrancy ordinances are there to be followed, but I have found no legal challenge specifically to an unsightly beggar ordinance. Various American courts across two centuries have mulled over the question of whether municipal bans on appeals to passersby to buy goods or give alms constitute a violation of the First Amendment, following the lead of one mid-nineteenth century judge who associated the crying-out of hawkers with political outcry, "which some lexicographers conceive that the derivation of the word would seem to indicate" (Rhyne 7). This argument, frequently made about vocal soliciting and peddling, was far less frequently applied to cases involving wordless gestures of begging. It was never extended explicitly into the terrain of ugly law. The emphasis in the ordinances on appearances rather than words made appeals to overturn the law on first amendment grounds highly unlikely. Disabled bodies "spoke" volumes, spoke if anything too loudly, on the streets of ugly law cities. But they never spoke freely, and they never were imagined to speak politically.

Occasionally we find the presence of disabled bodies in legal challenges to begging prohibitions, but these bodies inevitably function only as exceptions to, not as the grounds of, First Amendment claims. They *frame* the large questions at stake, but the questions are not theirs. They appear, but not on their own behalf. Take, for example, the ruling in C.C.B. v. Florida, an important 1984 decision holding that cities are not "entitled to absolutely prohibit a beggar's exercise of his freedom of speech." The court in C.C.B. bolsters its case by noting that even in a prior court decision upholding the constitutionality of an anti-begging statute, "the blind or crippled person who merely sits or stands by the wayside" is excepted from the ambit of the law. Here the right of the "blind or crippled person" to beg is defended not as speech but as the outside of speech, mute and passive, "mere."

When disabled bodies do "speak up" in the history of American begging law, anything they say can be used against them. This is illustrated in a case directly preceding and very much related to the development of unsightly beggar ordinances, in which a New York appeals court ruled that disabled bodies in and of themselves could in fact constitute a form of speech—begging speech—and that the exercise of this kind of speech was punishable. (This was not a first amendment case; here the constitutionality of begging law itself went unchallenged.) In the matter of Haller (1877), we find the narrative of Frank Haller, "a boy about ten years of age, and a

cripple, unable to stand, and obliged to move on his hands and legs. At the time of his arrest, he had been moving down Broadway on the sidewalk, from John Street to Wall Street…when he was stopped and taken into custody by the officers. As he passed along the sidewalk the officer saw him holding out his hand to several persons, and receiving money from them, but he did not hear him speak to any of him. It is claimed that this silent action on his part was not 'begging alms' or 'soliciting charity' within the meaning of the statutes." The court rejected this claim, affirming that the anti-mendicancy statute in question "does not necessarily require proof of spoken words to constitute begging." In fact, the judges argued, "in many instances words are far less effective to accomplish the end than simple acts. The deaf and dumb man, real or pretended, who stands with a placard on his breast, and with extended hat or hand, is a solicitor of charity as completely as though he spoke to passers by." Gesture could constitute begging, as the theoretical deaf man (real or—note—pretended) functions to epitomize.

But the ruling went further still. At the farthest reach of the "matter of Haller," the law prohibited not only street behavior but potentially street *being* for disabled people. "Every one whose diseased or crippled condition appeals to sympathy, and who places himself in a position to attract attention, or passes along the street calling attention by sign, act or look to his unhappy condition, and receiving from those who observe him the charity which he is obviously seeking, is a solicitor of charity within the meaning of the law…. Indeed, the class of silent beggars who exhibit deformities, wounds or injuries which tell plainer than words their needy and helpless condition are the most successful of solicitors for charity." The language of exhibiting deformity brings us to the brink of the ugly law. As in the unsightly beggar ordinances, which prohibit "exposure" to "public view," *acts* of appeal seem to be the problem in *Haller*: "placing himself in a position," attracting attention, "calling attention," "seek[ing] obviously." (The *Haller* ruling begins, in fact, with "act" talk: "The act of a cripple…is 'begging for alms.'") At the same time, however, because disease or crippling might inevitably, and without any deliberate invitation, draw the stares of passersby, or because they might engender unsolicited sympathy simply by being seen as "unhappy…needy and helpless condition[s]," *Haller* verges on ruling that disabled people, no matter how they behave, *are* begging embodied. This decision paves the way for the extreme form of ugly law. Indeed, it suggests one factor (of many) at stake in the emergence of unsightly begging ordinances: the need to close the loophole that might allow disabled bodies to tell stories of poverty "plainer than words." Thus the one example in the history of pertinent U.S. begging case law, *Haller*, that treats "diseased or crippled condition[s]" as acts of expression reads them as barred speech, not free speech.

At the dramatic (and entirely fictional) climax of John Belluso's biographical play "The Body of Bourne," disabled writer Randolph Bourne openly challenges Chicago's ugly law. From the outset of Belluso's play, Bourne has grappled with his relation to the categories policed by the unsightly beggar ordinances. The play follows Bourne through the development of his career as an intellectual and social critic, repeatedly stressing Bourne's fear of appearing on stage in public. In Belluso's version of his life, Bourne is finally persuaded to deliver a public speech in Chicago

opposing U.S. involvement in World War I. He brushes off police threats to arrest him for delivering the speech, saying, "I'm just a harmless cripple," and is answered "That's the point exactly." The ugly ordinance, he is told, will be used to prevent him from speaking. In a critical scene, Belluso's Bourne flouts the law and appears in spotlight at the Chicago City Club, comparing the war to a disease and insisting: "I will allow my body to be seen" (Belluso 44).

I have found little record of privileged disabled people like Randolph Bourne legally prohibited from appearing in public for being "unsightly and disgusting objects." Unsightliness was a status offense, illegal only for people without means. In New York, which had no ugly law per se but where police chief Peter Conlin nevertheless made a point of cracking down on "impudent," "afflicted and deformed" beggars in 1896, John Bourne, who had "a palsied leg" and who had been arrested six times in the previous four years for begging, "assaulted Officer S. by striking him on the head with his crutch" during his arrest ("Illustrative Cases" 2).[7] Here is the Bourne who historically did challenge the policing of his body and who did insist, at risk, that he would allow his body to be seen—a very different figure, under far more wretched circumstances, than Randolph Bourne in John Belluso's play. In John Bourne's case (and one assumes many others) such protest was ineffectual. He was sentenced to six months in prison.

But many poor people, like ten-year old Frank Haller, went public daily, insisting, like Belluso's Bourne, "I will allow my body to be seen." The display of disability while begging was (or was sometimes, or could be) not only a direct means of subsistence but also a circumspect and informal means of political struggle. As historian Brad Byrom puts it, "the public presence of cripples along with the graphic and brazen act of displayin…encouraged change in social policy and cultural beliefs," particularly after 1890, as the number of beggars reached a new critical mass (Byrom 29). But the courts did not recognize these acts as political.

Historically the First Amendment has offered disabled beggars no protection. Quite the opposite: Laura Beth Neilson has noted in her recent study *License to Harass* that the courts have tolerated restrictions on begging far more than on any other form of public speech, however hateful, because "begging, unlike sexual harassment or racist speech, is the one form of public speech that most often confronts more privileged members of society"—merchants, property owners, white straight men (3). City mayoral begging permit systems have sometimes granted disabled people (particularly war veterans) a limited "license to harass," but as often as not co-existing municipal ordinances like the ugly laws contravened that permission, trapping unsightly subjects in perpetually uncertain states of exception that finally granted only one group of people "harassment" privilege: the police. The legal record offers a sobering challenge to dreams of legal remedy for what the Burgdorfs, in their first uncovering of ugly law, called "A History of Unequal Treatment." Like the white women and men and women of color whose sidewalk encounters Neilson has studied, most poor disabled people under the regime of ugly law saw the courts "as offering no recourse or worse, as posing the added threat of legal repression" (16).

Instead, their resistance took place daily, outside the law. It took form, for instance, in the small but astonishing body of subaltern life-writing in the mode of "mendicant literature" which openly defied the ugly laws both in content and in practice. Written and sold on the street by impoverished disabled people, these testimonies against oppressive city ordinances, corrupt mayors and police violence at once attempted to market suffering, to deflect arrest (by legitimizing the authors as entrepreneurs, worthy of respect), to manipulate and to resist consignment to the category of "unsightly beggar." But these narrative histories of unequal treatment are—literally—another story.

These writings, though they were always individual and ad hoc efforts, bear some resemblance to the street journals produced by organized "homeless people" in some U.S. cities today; the history of what we now call "the homeless" has as much to do with ugly law as the history of what we now call "the disabled." The crude elements of ugly law may be broken down roughly as follows: the call for harsh policing; anti-begging; systematized suspicion set up to winnow the deserving from the undeserving; suppression of acts of solidarity by and for marginalized urban social groups; and structural and institutional repulsion of disabled people, whether by design or by default. Today's struggles to erase the vestiges of ugly law also include the many forms of organizing that combat anti-homeless city ordinances, which, like ugly law before them, raise "a politics of aesthetics above the politics of survival," enacting what Don Mitchell has called the neoliberal "annihilation of space by law." "By redefining what is acceptable behavior in public space, by in effect annihilating the spaces in which homeless people *must* live, these laws seek simply to annihilate homeless people themselves," writes Mitchell (167, 189). Set Mitchell's word "annihilate" side by side with the language the *Chicago Tribune* used in reporting the advent of Chicago's first ugly law in 1881: "Alderman Peevey…proposes to abolish the woman with two sick children who…grinds 'Molly Darling' incessantly." The most powerful examples of recent resistance to the legacy of the unsightly beggar ordinances reflect profound engagement at that very meeting ground of poverty, urban marginalization (or annihilation) and disability where ugly law culture first began to germinate (for instance, in programs of disability advocacy for prisoners and homeless people and people in domestic violence shelters). But that, too, is another story.

For the purposes of this essay, I want to stress that the stories I have told about disabled beggars in the American courts have consequences for our understanding of the social, cultural and legal position of all disabled people in the post-ADA era. The archives of ADA court cases offer plenty of contemporary equivalents of similar legal refusals to read the "acts of cripples," or as we now say of qualified handicapped individuals, as forms of *expression*, protected and political. Acts like seeking appropriate workplace accommodation, challenging employment discrimination, or protesting disabling barriers in the built environment are still too often read as forms of begging: stories of individual need rather than the collective good.[8] It is not just that we need to replace, as the eloquent terms of the 1970s disability rights movement put it, "begging" with "demanding," or the story of begging with the story of rights. Rather, we need to challenge the distinction between "begging" and

"demanding," "needs" and "rights," pursuing the insight that some disabled beggars, as much as Helen Keller or Franklin Delano Roosevelt, attempted to articulate: the idea that another world is accessible.

ENDNOTES

1. Scholars who discuss the ugly law include Linton; Garland Thomson; Snyder and Mitchell; Gilman; Siebers; Imrie, and Lifchez. So frequently is the Chicago ordinance cited in scholarship identified as disability studies that it's not surprising that in summer 2000, a New York Times essay on the "blossoming culture of disability" exemplified the entire field of disability studies in this way: the work "unearth[s] attitudes behind laws like nineteenth-century Chicago's 'unsightly beggar ordinances' " (Brown).

2. In 1867 the San Francisco Board of Supervisors passed the first ugly law I have found, an ordinance the San Francisco *Morning Call* described as an "order to prohibit street begging, and to prohibit certain persons from appearing in streets and public places" (July 3, 1867 2). See also the 1881 *Municipal Code of Chicago*, law #1612 (377). Other cities that passed the law include Columbus, Cleveland, Denver, Omaha and Lincoln.

3. A draft of a New York Law by CDK (Charles D. Kellogg) may be found in the Community Service Society/Charity Organization Society papers (Box 144), Columbia University Rare Book Library, New York. See also the letter in the same box from Edward Devine to Hon. William L. Strong, December 30 1895, advocating that New York pass a version of what he calls an "anti-freak" law like Pennsylvania's. Pennsylvania's 1891 House of Representatives had passed Act No. 276, a copy of which rests in the COS archives where Kellogg's draft is held. Though it gestures toward the freak show (and in fact collapses freak show and street begging into one forbidden category), Act 276 has all the hallmarks of the ugly law: "AN ACT. To prohibit the exhibition of physical and mental deformities. Be it enacted that whoever shall exhibit any physical deformity to which he or she shall be subject or which is produced by artificial means for hire or for the purpose of soliciting alms shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine not exceeding fifty dollars or suffer imprisonment not exceeding six months. Kellogg's version for New York proposed an even more extreme amendment of the Pennsylvania language: "Be it enacted, &c, That on and after the passage of this act it shall be unlawful for any person, whose body is deformed, mutilated, imperfect or has been reduced by amputations, or who is idiotic or imbecile, to exhibit him or herself in any public hall, museum, theatre or any public building, tent, booth or public place for a pecuniary consideration or reward, or to solicit or receive charitable relief, or to go from house to house or to stand or display themselves upon any public street or place to solicit or receive alms…." It is just as well for New Yorkers that this version of an ordinance, banning everyone "imperfect" from appearing in public, was never enacted despite COS efforts.

4. The "National Association" is Forbes' Association for the Prevention of Mendicancy and Charitable Imposture, formed after Forbes broke with the Charity Organization Society; for the history of his dismissal see the as yet unpublished work of Rebekah Edwards, English Department, U.C. Berkeley.

5. The court here applies one of the "counterfactual schemes" that Stephen Best has shown were "common to turn of the century equal protection law…those interrupted itineraries (between cause and effect, past and present) that spawn scenarios characterized by alternative chronologies, historical contingency, and fictive suppositions." Here, as in the cases involving racial segregation analyzed by Best, counterfactualism provided "that 'fuzzy logic' that enabled the courts to imagine a separate-but-equal (alternative and parallel) universe" (Best 218, 227).

6. On the kind of grueling work Thompson was forced to perform, see Stanley, "Beggars Can't Be Choosers," 1278.

7. On Conlin's crackdown, see Norden 14–15, and "Sham Cripples."
8. See Davis on this point.

WORKS CITED

Belluso, John. *The Body of Bourne.* New York: New Dramatists, 2003.

Best, Stephen. *The Fugitive's Properties: Law and the Poetics of Possession.* Chicago: Univ. of Chicago Press, 2004.

Brown, Patricia Leigh. "Viewing Ahab and Barbie Through the Lens of Disability." *New York Times* (August 20, 2000).

Burgdorf, Marcia Pearce and Robert Burgdorf, Jr. "A History of Unequal Treatment: The Qualifications of Handicapped Persons as a 'Suspect Class' Under the Equal Protection Clause," *Santa Clara Lawyer* 15 (1975): 855–961.

Burgdorf, Robert L. Jr. "The Americans with Disabilities Act: Analysis and Implication of a Second-Generation Civil Rights Statute." *26 Harvard C.R.-C.L. Rev* 1991.

Burnside v. Superintendent of House of Correction, 18 Pa. D. 601, 1909 WL 3108, Pa. Quar. Sess., January 01, 1909, 18 Dist. R. 601.

Byrom, Brad. "Mendicancy and Disability in Late Nineteenth Century Urban America." In "A Vision of Self Support: Disability and the Rehabilitation Movement of Progressive America." Ph.D. dissertation, University of Iowa 2004.

C.C.B. v. State, 458 So. 2d 47 Fla. App. 1 Dist., 1984 Oct 18, 1984.

Chicago Tribune May 19,1881: 3. Untitled article on the ugly law.

Davis, Lennard. "Bending Over Backwards: Narcissism, The ADA and the Courts." In *Bending Over Backwards: Disability, Dismodernism and Other Difficult Positions*, 119–144. New York: New York Univ. Press, 2002.

Digest of the Laws and Ordinances of the City of Philadelphia. Philadelphia: Kay and Brother, 1887.

Garland-Thomson, Rosemarie. *Extraordinary Bodies: Figuring Physical Disability in American Culture.* New York: Columbia Univ. Press, 1997.

Gilman, Sander. *Making the Body Beautiful: A Cultural History of Aesthetic Surgery*. Princeton: Princeton Univ. Press, 2000.

Gray v. Forbes, Supreme Court Appellate Division, 1st Dept., N.Y., March 19 1915.

Hartman, Saidaya. *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America.* New York: Oxford, 1997.

"Illustrative Cases." Handwritten manuscript by anonymous author, in the Community Service Society Papers of the Charity Organization Society at the Columbia University Rare Book Library, Box 144 ("Mendicancy—1883–1920").

Imrie, Rob. *Disability and the City: International Perspectives.* New York: St. Martin's Press, 1996.

"The Late James Forbes: Pioneer in the Borderland Between Social and Police Work," *New York Times* (Dec. 7, 1935): 16.

Laws of the General Assembly of the State of Pennsylvania, *Passed at the Session of 1879, in the One Hundred and Third Year of Independence.* Harrisburg: Lane S. Hart, 1879. Act No. 31, "To define and punish tramps," 33–34.

Lefever v. City of Columbus (Jun. 27, 1921). 23 Ohio N.P. (N.C.) 372, 1921 WL 1337 (Ohio Com.Pl.)

"Legless Newsboy Sues. Wants $25,000 Damages for Article That Said He Was Once a Tramp," *New York Times* (Sept. 30, 1911): 5.

Lifchez, Ray. *Rethinking Architecture: Design Students and Physically Disabled People.* Berkeley: Univ. of California Press, 1986.

Linton, Simi. *Claiming Disability: Knowledge and Identity*. New York: New York Univ. Press, 1998.

Matter of Haller (March 1877). 3 Abb. N. Cas. 65, Supreme Court, N.Y., N.Y.

Merrifield, Andy. *Metromarxism: A Marxist Tale of the City.* New York: Routledge, 2002.

Mitchell, Don. *The Right to the City.* New York: Guilford, 2003.

The Municipal Code of Chicago: *Comprising the Laws of Illinois Relating to the City of Chicago, and the Ordinances of the City Council*. Chicago, 1881.

Nielson, Laura Beth. *License to Harass: Law, Hierarchy, and Offensive Public Speech*. Princeton: Princeton Univ. Press, 2004.

Norden, Martin. *The Cinema of Isolation: A History of Physical Disability in Movies*. New Brunswick: Rutgers, 1994.

Rhyne, Charles S., Charles H. Burton, and Charlie O. Murphy. *Municipal Regulation of Peddlers, Solicitors and Itinerant Merchants: Report No. 118*. Washington, D.C.: National Institute of Municipal Law Offices, 1947.

San Francisco Morning Call, July 3, 1867.

Siebers, Tobin. "What Can Disability Studies Learn from the Culture Wars?" *Cultural Critique* 55 (Fall 2003): 182–216.

Snyder, Sharon and David T. Mitchell, "Out of the Ashes of Eugenics: Diagnostic Regimes in the United States and the Making of a Disability Minority." *Patterns of Prejudice* (January 2002): 79–103

"Sham Cripples," *New York Times* (Feb. 23, 1896), 4.

Stanley, Amy Dru. "Beggars Can't Be Choosers: Compulsion and Contract in Postbellum America." *Journal of American History* 78, no. 4 (March 1992).

Stanley, Amy Dru. *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Era of Slave Emancipation*. New York: Cambridge, 1998.

Stotter v. Rochelle, 83 Kan. 86, 109 Pac. 788, L.R.A. (N.S.) 49.

Thompson v. Superintendent of House of Correction (Oct. 6, 1914). 58 Pa. Super 465, 1914 WL 4887 (Pa. Super.), Superior Court of Pennsylvania, Commonwealth.

Treanor, Richard Bryant. *We Overcame: The Story of Civil Rights for Disabled People.* Falls Church, Va.: Regal Direct Publishing, 1993

Woodstock Burying Ground Ass'n v. Hager, 68 Vt. 488.