

**MADNESS ON THE MARGINS:
BIOPOLITICS AND ROMA SCHOOL SEGREGATION IN THE CASE
HORVÁTH AND KISS V. HUNGARY**

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Submitted to

Central European University

Department of Gender Studies

GEMMA- Erasmus Mundus Master's Degree in Women's and Gender Studies



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ABSTRACT

In this thesis, I explore the biopolitics of disproportionately segregating Roma children into special education schools in Hungary via the science of mental testing as a strategy of nation building to illustrate how hegemonic forces construct, maintain, and manage deviant identities within their sphere of influence.

I utilize the 2013 court case *Horváth and Kiss v. Hungary* at the European Court of Human Rights in Strasbourg in which two Roma contest their state-assigned identity as mentally disabled to demonstrate the structural dynamic behind streaming specific identities into segregated spaces. I argue that the court case shows the systematic diagnosis and segregation of Roma children into remedial schools as part of the normalizing project of the state, reflecting the biopolitics dynamic of constructing margins in order to define and reaffirm normative identities in a dialectical fashion.

DEDICATION

To Li'l Sebastian. We miss you in the saddest fashion.

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INTRODUCTION

For my thesis, I was primarily interested in how the perception and construction of different identities by hegemonic forces work to create and maintain a particular political reality. Specifically, I wanted to investigate how the governing body of a liberal democracy utilized identity construction as a strategy of nation building.

I chose to explore the biopolitics of disproportionately segregating Roma children into special education schools in Hungary via the science of mental testing as a strategy for nation building to illustrate how hegemonic forces construct, maintain, and manage deviant identities within their sphere of influence.

I utilize the 2013 court case *Horváth and Kiss v. Hungary* at the European Court of Human Rights in Strasbourg in which two Roma contest their state assigned identity as mentally disabled to demonstrate the structural dynamic behind streaming specific identities into segregated spaces with the help of a concrete example.

I argue that the court case shows the systematic diagnosis and segregation of Roma children into remedial schools as part of the state's normalizing project, reflecting the biopolitics of constructing margins in order to define and reaffirm normative identities in a dialectical fashion.

Roma people have experienced systematic exclusion and oppression since they first migrated to Europe from India in the 12th century (Hajio and McKee 2000, 864). Since then, Roma in the region experienced slavery, as well as economic, educational and physical segregation, creating a circle of poverty (ibid).

The segregation of Roma children into schools for mentally disabled illustrates a contemporary example of such discrimination. While only a minority in Hungary, Roma children constitute 20 to 90 percent of students in special education schools (White 2012). Educators justify streaming children into special education schools primarily by a child's below-average score on intelligence tests known for their racial bias. With the average so-called intelligence quotient (IQ) score at 100, the World Health Organization (WHO) defines mental disability as persons receiving a result of 70 or below on mental tests (ibid). Hungary, however, sets the minimum IQ to access mainstream education at 86 (HUDOC par.18). This has as a consequence that Hungary classifies at 5.5 percent significantly more children as mentally disabled than the European average of 2.5 percent (HUDOC, par. 74.30). The remedial schools in which children under the diagnostic of mentally disabled are placed only prepare students for low-skill labor, perpetuating the circle of poverty (ibid).

In 2011, the Hungarian non-governmental organization the European Roma Rights Centre together with lawyer Lilla Farkas applied to the European Court of Human Rights (ECHR) to judge the case of two Roma men who claimed to have experienced ethnic discrimination at the hand of the Hungarian government through their segregation in a remedial school. The plaintiffs István Horváth, born in 1994, and András Kiss, born in 1992, both underwent mental testing at the age of 7, which led to their diagnosis as “mentally disabled” and their subsequent placing into a remedial school in their hometown of Nyíregyháza (HUDOC, par. 1-3,16, 25). The litigators argued that the educational authorities had wrongfully diagnosed them as mentally disabled on the

foundation of their Roma origin, and that the special education school they were made to attend provided a substandard training that violated their right to equal education.

In January 2013, the European Court of Human Rights (ECHR) in Strasbourg issued a final judgement in the case *Horváth and Kiss v. Hungary*, concluding that Hungarian educational authorities had falsely diagnosed the two suing Hungarian Roma men with below-average intelligence in their childhood. The court declared that the state of Hungary violated the existing “Article 2 of Protocol No. 1 read in conjunction with Article 14 of the Convention”, which forbids ethnically based discrimination.

In my thesis, I explore the disproportionate segregation of Roma children into special education schools in Hungary as a strategy of biopolitics for the purpose of nation building. I want to explore the construction of certain identities as deviant elements in the national space, in this case, the racialized bodies of Roma children deemed mentally disabled in Hungary.

The virtually only source of statistics concerning school segregation in Hungary come from NGOs, since the state does not gather information regarding specific ethnicities (Greenberg 2010, p. 926). All major local NGOs, such as the Roma Education Fund, make their studies accessible online for free and in English.

In the most recent policy paper on the issue in 2012, accessible through the Roma Education Fund, author Julia M. White connects the practice of school segregation with the project of nation-building, pointing to the crucial role formal education plays in

producing citizens¹ (2012, p. 13). The plaintiffs used this documents as an important expert source to support their case. In Hungary, Roma only constitute 5 to 7 percent of the population, but present between 20 to 90 percent of students in special education setting (ibid, p. 56). In the context of the continuous marginalization of Roma bodies throughout history and the importance of schooling for the nation-building project, this practice gains a definite political overtone.

The document published as the final judgement of the court case by the ECHR in 2013 will form the foundation of my thesis². I will also consider the “Reply to government observations” issued by the European Roma Rights Center, where the legal representation of the litigators address the specific arguments of the opposing party³.

In my first chapter, I want to present my research as a feminist project. As Rosemarie

Garland-Thomson writes:

The informing premise of feminist disability theory is that disability, like femaleness, is not a natural state of corporeal inferiority, inadequacy, excess, or a stroke of misfortune. Rather, disability is a culturally fabricated narrative of the body, similar to what we understand as the fictions of race and gender. The disability/ability system produces subjects by differentiating and marking bodies. Although this comparison of bodies is ideological rather than biological, it nevertheless penetrates into the formation of culture, legitimating an unequal distribution of resources, status, and power within a biased social and architectural environment.
(Garland-Thomson, ed. 2006, p. 259)

¹ Retrieved from:

http://www.romaeducationfund.hu/sites/default/files/publications/pitfalls-and-bias-screen_singlepages.pdf

² Retrievable from: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116124#{"itemid":\["001-116124"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-116124#{) (I will cite this document in the format as HUDOC and then specify the paragraph I am referring to in the document)

³ <http://www.errc.org/cms/upload/file/reply-to-governments-observation.pdf>

Thus, I will use Feminist disability studies and Foucault's concept of Biopolitics to form a standpoint from which to approach the court case. Through this lens, I will attempt to show the politics behind constructing Roma children as disabled, which connects to the construction of gender, race, or class as forms of social control.

In the second part of my thesis, I will put the practice of segregating Roma students into remedial schools into the historical context of Roma marginalization. I argue that Hungarian Roma experienced attempts by the state to control their identity virtually continuously since their arrival in the Hungarian territory.

I then turn to the history of mental testing, arguing that intelligence tests form a technology for social control that was often used to identify and subsequently restrict deviant identities to spaces apart from the normative populace.

Finally, I will discuss the court case through a foucauldian and feminist lens, arguing that the intersection of the deviant identities of Roma and mentally disabled set in motion a state-designed process of affirming and reinforcing the marginalized position of said identities through schooling.

SAVAGES! SAVAGES! BARELY EVEN HUMAN: BIOPOWER AND THE CONSTRUCTION OF DIFFERENCE

In this thesis, I conduct a critical analysis using a theoretical framework of biopolitics and taking up a feminist standpoint in order to investigate how the power structure creates and maintains specific identities, how it acts on such identities, and how the subjects behind the assigned labels respond. Specifically, this theoretical framework will serve to investigate how the category of the mentally disabled came into being, how the two plaintiff became part of this category, how the Hungarian government acts on this identity by segregating students into special education schools, and how the former students resist their identity as “mentally disabled” through the channels of the legal system.

Foucauldian sociologist Thomas Lemke (2011) proposes the use of biopolitics as a research lens capable of visibilizing complex relations of power, especially within the nation state:

Works written under the rubric of “biopolitics” are interested above all in competition and cooperation, anxiety and aggression, relations of dominance, the construction of hierarchies, enmity towards foreigners, and nepotism.
(Lemke 2011, p. 18)

Biopolitics, then, presents a framework for analyzing a relational dynamic of different forces, usually one dominant and one obedient, in a shared space.

Michel Foucault first introduced this modern use of biopolitics in the aftermath of WWII when trying to develop a theoretical framework fitting to approach the Nazi regime analytically (Foucault 2003). Foucault identified a historic break around the 17th and 18th

century that marked the transition from what he termed sovereign power to biopolitics (ibid, p. 241). Since classical times, the sovereign or absolute power in the form of monarchs or autocrats sought to control its population by controlling resources as well as exercising power by allowing certain people to live while condemning others to die (ibid, p. 240). As killing presents a more feasible display of power than creating life, it becomes the focus of sovereign rule:

Sovereign power's effect on life is exercised only when the sovereign can kill. The very essence of the right of life and death is actually the right to kill: it is at the moment when the sovereign can kill that he exercises his right over life.
(Foucault 2003, p. 240)

Taking lives, thus, does not only form a prerogative of the sovereign rule, but a necessity, as the autocrat can only demonstrate their power to reign by applying deadly force.

Biopolitics emerged together with liberal democracies as a strategy that targets life as opposed to death as the focus of social control. According to Foucault, between the 17th and 18th century, “biopolitics” started addressing “the population, with the population as political problem, as a problem that is at once scientific and political, as a biological problem and as power's problem” (2003, p. 245). The focus, then, shifted from the management of resources to the management of human lives through scientific means to facilitate a specific political project, such as the building of a nation state.

Foucault viewed biopolitics as technologies that sought to maximize the potential of each citizen for the system of the nation state:

Attempts were made to increase their productive force through exercise, drill, and so on. They were also techniques for rationalizing and strictly economizing on a power that had to be used in the least costly way possible, thanks to a whole system of surveillance, hierarchies, inspections, bookkeeping, and reports-all the technology that can be described as the disciplinary technology of labor.
(Foucault 2003, p. 242)

Biopolitics, then, affected the population as a whole, though different technologies target different identities with differing desired outcomes. These technologies address the body on two levels: the individual level where each body is engaged in a process that renders it “both useful and docile”, and a societal level, where biopolitics attempt to guide “life” on a mass scale, developing strategies to control, for example, birth- and mortality rates (Foucault 2003, p. 249). This general approach has a stabilizing effect, balancing out deviating elements. Both processes inform each other, ideally supporting one holistic image of the nation for a smooth operation of the power structure.

In sum, “Sovereignty took life and let live”, while biopolitics are “making live and letting die” (ibid, p. 247). The latter, therefore, does not only present a more fitting approach to social control in a capitalist democracy, but also enables the governing forces to let the lives of its people contribute to the success of the nation as a whole.

“Biopolitics”, or “biopower”, therefore, can be summed up in a simplified manner as, “Politics in the name of life” (Esposito 2008, p. 18), or more specifically as the “technology of power over ‘the’ population as such, over men insofar as they are living beings” (Foucault 2003, p. 247). Therefore, The term always indicates a hierarchy in the power relations it investigates, often between governing bodies and its subjects. A government’s power in the context of a capitalist democracy, consequently, depends on its effective use of biopower.

Scholars such as Nikolas Rose often grapple with how biopolitics address the challenges of new technologies (2006). Foucault himself (2003) predicted that humans might develop a technology that supersedes their ability to control it (p. 254). Modern biopolitics scholars often engage with new inventions to analyze what potential they hold

in influencing the future of humanity. Constructing laws to regulate genetic screening, abortion, physical enhancement, or fertility treatment, to name but a few examples, present an increasingly complex challenge for the nation state. Biopolitics now focuses on these ever increasing technological challenges that pose the potential of uprooting our understanding of life itself (Lemke 2011, 27). While immensely interesting to consider, the discussion taking place around the biopolitics of new technology is by nature highly individualized due to the complexity of the technology itself as well as cultural and individual circumstances at play. In consequence, scholars and politicians find themselves discussing the potential of a specific technology and its implications for human life. The considerations, then, are by nature theoretical, and usually pertaining to upper-classes, as they have the means to access new technology first. The more recent debate using the concept of biopolitics is thus a conversation around if and how to regulate new technologies that alter the individual human body, or, on the global scale, regulations pertaining to protecting the environment as a prerequisite for human life. Biopolitics, therefore, does not exclusively refer to technologies to oppress certain elements in society, but instead put to use strategies to steer the population towards a multiplicity of desired outcomes. I argue, however, that applied to the structure of an inherently stratified capitalist society, such technologies have to produce winners and losers in order to uphold a societal structure based on winning and losing. Rather than speculating about how the biopolitical use of technological advancements will shape our understanding of the human in the future, I would like to engage with how power structures use biopolitics as a means of control and identity construction. These considerations are of course not at all mutually exclusive, but inform each other. Any

future new technology with the power to shape humanity will have to rely on humans using it. Thus, the way we use technology in the future is inevitably located in and intertwined with the historical and contemporary understanding on who is fully human within the context of the nation state, and who is not.

The court case shows how the Hungarian government and the plaintiffs argue for and against the assignment of an identity, in this case, the identity of the “mentally disabled”, within the legal realm of first the nation and then the European Union. Editor and contributor to the 2005 anthology *“Foucault and the Government of Disability”* Shelley Tremain defines “Government” in accordance with Foucault as “any form of activity that aims to shape, guide, or affect the conduct of some person or persons” (p. 8). Foucault also called this idea the “conduct of conduct”, meaning that governing attempts to influence and steer the actions of individuals rather than exercising power over persons directly (ibid). As Tremain explains, this idea includes anything a governing body can use as a means for control, which can signify measures such as punishment, but more commonly, means the construction of appropriate behaviors and identities, and channels through which to express each (ibid). This “normalization” simultaneously produces a dynamic of “othering”, constructing subjects as deviant at the same time as producing norm-conform citizens.

Through the action of governing, then, the power structure creates a specific ideal of the citizen. Fiona Kumari Campbell argues in the context of the Anglophone world that this ideal subject within the nation state presents a gendered, classed and raced identity:

The paradigmatic incarnation of legality – the normative citizen- represent the standard against whom all others are measured and is invariably white, heterosexual, able-bodied, politically conservative, and middle class.
(ed. 2005, p. 111)

While individuals may choose to embrace or reject this image, it is because such identities become the dominant narrative through the privileged channels of the governing structure that individuals have to engage with this discourse, defining themselves through-or in contrast to it.

The legal system becomes a channel through which these identities are further normalized, and the normalization legitimized. As for instance Wolfenberger argues, normalization means “to establish and/ or maintain personal behaviors and characteristics which are as culturally normative as possible” by the “utilization of means which are as culturally normative as possible” (qtd. in ed. 2005, p. 214). The judiciary forms one of the fundamental branches of government as it interprets laws, granting the system legitimacy by establishing it as just. Through legal texts, the legal system defines what constitutes appropriate behaviors and identities within the nation state, and what does not. For example, a person may fall under the label “illegal” just by showing presence in a space deemed inappropriate for his or her assigned identity, such as the presence of non-citizens in the national space or the presence of citizens on property they do not own. A “man” and a “woman” can conform to the normative ideal of the nuclear family by joining into the legal contract that is marriage, while other identities such as same sex couples are excluded from this legally recognized form of partnership. This shows that the law does not only construct conduct to avoid and aspire to, but chooses which persons to include into this ideal image of the citizen, and whom to prevent from entering the realm of the national core. The judiciary, then, defines desirable identities in congruence with the goals of the nation state, and determines measures against undesired conduct.

On this foundation, the educational system plays an important role in training children to become desired subjects within the nation state. For Foucault, schools became a site of nation-building where specific values and behaviors are taught as correct in order to construct citizens: “this disciplinarian power in schools was productive: it produced a special kind of individuality, subjectivity, and freedom” (ed. 2005, p. 112). State-controlled educational settings, then, form a channel through which the normalization process is achieved. While the judiciary solidifies acceptable identities, schools constitute a strategy to shape them.

In a segregated educational system, schools also hold the potential to separate undesired identities through different schooling channels. Coming from a perspective that understands schools as entities where the government produces citizens, the exclusion from mainstream education of specific pupils prevents these students from participating in a process that renders them full members of the nation state. As Simons and Masschelein (ed. 2005) argue,

The framework of education, at least for primary and secondary schools, remains the nation-state. During the 1970s and 1980s, in different countries, ‘national’ curricula have been formulated according to what is necessary in order to function in ‘society,’ where this object is construed as a totality of individuals who enhance individual well-being and freedom, as well as national well-being, through their entrepreneurial behavior.
(p. 221)

The creation of separate forms of schooling, therefore, signifies the creation of different types of political identities within the state. If the student has to conform to a specific image of a citizen as closely as possible, it seems plausible that states aim to remove children that disrupt this image. Such a practice holds the potential of maximizing the effectiveness of a normalizing education by keeping the learning environment as

homogeneous as possible, and simultaneously facilitating the closer control of those deemed non-citizens (in a legal or de-facto sense). An uneducated caste of potentially disruptive elements segregated from the general population presents less of a threat to the power structure. This explains the rationale behind, for instance, gender-segregated education, that prepared male students as citizens and females as reproductive bodies, as well as the outlawing of any education for slaves in the United States and the subsequent segregated school system under Jim Crow until the mid-nineteen-sixties. The educational assembly line reaffirms the ethnic majority, able-bodied male as the desired end-product, while sorting out or suppressing deviant elements.

To work most efficiently, the machinery of governmentality relies on technologies that help differentiate different types of subjects from each other. For Foucault, power is tied to knowledge, which in turn derives from the ability to make visible relevant human actions. Once such actions are identified through the gaze of the hegemonic force, the latter can proceed to act upon the conduct of specific subjects. While a government often focuses on guiding and encouraging desired behavior, Foucault was especially interested in how, “within a specific system of knowledge, certain human acts, practices, behaviors, characteristics, emerge as specific problems” (Yates ed. 2005, p. 65). Scott Yates identifies three crucial steps in identifying this process in Foucault’s writing, the so-called three domains:

- 1) The domain of truth through which we become constituted as subjects of specific forms of knowledge*
- 2) The domain of power in which we are constituted as subjects acting upon others and acted upon in particular regulated ways by others*
- 3) Ethics ‘through which we constitute ourselves as moral agents’*
(*ibid*, p. 67)

In the realm of education, intelligence tests emerged as the technology that created new forms of knowing a subject. As mental disability presents a “discursively constituted object”, such an identity is not simply diagnosed, but created by new technologies of knowledge (ibid, p. 68). In the second domain, this specific knowledge connects with the power to act upon subjects:

Power categorizes individuals, marks them by their own individuality, attaches them to their own identities, imposes a law of truth that they must recognize in themselves and that others must recognize on them.
(ibid, p. 68)

Through the technology of mental testing, subjects are marked as mentally disabled, which prompts the government intervention of assigning special education schools as the appropriate space for this particular identity.

In the last domain, individuals have to grapple with this truth in order to establish their own understanding of self. As Yates (ed. 2005) explains:

This domain of ontology involves questioning the ways in which people constitute and recognize themselves as certain TYPES of subjects, how they assign meaning and value to their conduct in line with particular ideal through which self-relationships are formed and according to which one governs one’s own conduct are not invented by the individual; rather, they are cultural models that offer rules, opinions, and advice on how to behave “appropriately”. Through these ideals, individuals are able to question, observe, and shape their own conduct.
(p. 69)

As no individual can construct an identity in a vacuum, each person’s uniqueness depends on their relational position within society. Additionally, we are limited in our expression of self through the usage of a shared language, which includes a common understanding of specific identities one negotiates their own individual position through. By defaulting to these dominant discourses, subjects inevitably also reinforce them, potentially strengthening normative assumptions even while trying to subvert them.

Often, the identity on which the power structure officially acts intersects with other marginalized positions, which work to dynamically reinforce each other.

Feminist disability studies analyze pathological categories such as mental defects as one aspect of intersectionality. Foucault greatly influenced the body as field of research, subsequently informing much of feminist theory that tried to understand how the marking of different bodies as male/female informed their position and experience in society (Hughes, ed. 2005, p. 79). Both the female body and the disabled body (as well as the racialized body) are constructed through the (white) male gaze as problematic. Again, the “female/ disabled body”, is compared with and contrasted to the “ideal body that is male and normal”, never measuring up (ed. 2005, p. 84). As Hughes points out, the process of knowing a body as a deviation from the politically determined norm places such identities at the margins:

From a Foucauldian perspective, (...) normalizing judgment constitutes impairment as a deficit of corporeal integrity and – simultaneously- as an invalid social position. (...)To be situated within a discourse of “pathology,” is to be delegitimized.
(ed. 2005, p. 83)

As both the female and the disabled body show impairment in opposition to the norm, the disabled body comes to be understood as feminized, and the female body, as inherently disabled.

Understanding human identities as socially constructed and dynamic, feminist theory therefore applies to disabled-as-identity, as Garland-Thompson argues:

Disability - like gender - is a concept that pervades all aspects of culture: its structuring institutions, social identities, cultural practices, political positions, historical communities, and the shared human experience of embodiment.
(ed. 2006, p. 259)

The role of feminist theory according to Garland-Thompson, then, is to question how meaning is assigned to certain bodies, what identities this constructs, and what consequences these identity constructions entail (ibid).

In congruence with Foucault, feminist disability studies view these identity constructions as highly political enterprises. Marginalized and devalued social positions such as the ugly, sick, moronic, or even racial or female, reaffirm the privilege of those taking up the polar-opposite location (ibid). In order to visibilize the innate power relations of identity politics of embodiment, Garland-Thompson proposes five standpoints from which to navigate an investigation:

- 1) that representation structures reality,*
 - 2) that the margins define the center,*
 - 3) that gender (or disability) is a way of signifying relationships of power,*
 - 4) that human identity is multiple and unstable,*
 - 5) that all analysis and evaluation have political implications.*
- (ed. 2006, p. 260)*

These assumptions, which are derived from critical theory, inform a perspective that demonstrates the specific governmental motivations behind constructing both normative and deviant identities in specific manners in order to form a particular system of power. Foucauldian Biopolitics and feminist theory, therefore, amalgamate into a research perspective that investigates the role of deviant identities within the nation state. Applied to the court case *Horváth and Kiss v. Hungary*, this standpoint will first show how the state knew the plaintiffs as divergent subjects. To show that the two Roma students were already marked as subversive identities when tested for mental disabilities, I will show the consistency with which the marginalized position of Roma in the Eastern and Central European region was maintained throughout history. Secondly, I will address how mental testing emerged as a new technology of knowing a subject as disabled. With the help of

feminist disability theory, I will subsequently show how these intersecting identities of race and disability work to construct and maintain a marginalized societal position through the selective intervention and non-intervention of the governing body. Finally, I will discuss how the litigators resist and negotiate their assigned identities through the legal framework available to them.

TALE AS OLD AS TIME: HUNGARIAN HEGEMONY AND ROMA RESISTANCE

The identification of Roma bodies as deviant and their subsequent segregation from the general populace forms a consistent dynamic between the Roma and the state of Hungary. Putting the educational discrimination of Roma children into the context of the historic marginalization of their people provides an image that illustrates the continuity of discriminatory practices from dominant forces that targeted Roma. The ECHR itself based their ruling partially on the fact of the history of oppression of Roma people, which grants them a special status: “As a result of their turbulent history and constant uprooting, the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection” (HUDOC, par. 2. 102). The judge, therefore, agreed that the plaintiffs formed part of a consistently persecuted ethnic minority, which influenced the result of the case.

Due to their specific position within Hungarian society, the court considered it the state’s responsibility to ensure the implementation of inclusive policies.

Looking at the structural elements of Roma oppression will help in understanding school segregation as another such element of biopolitics. In the following chapter, I will outline different technologies various governments in the region of Hungary used to target Roma as a distinct identity category, and how this differentiation contributed in constructing and maintaining the marginalized position that forms the societal context for the court case. Rather than providing a comprehensive history of Roma in Hungary, I will focus on highlighting the specific strategies of the hegemonic forces throughout time that, as I argue, facilitated the production of the Roma as an inferior internal “other”. I propose that

throughout time and space, the marginalization of Hungarian Roma is kept in a circular, self-perpetuating dynamic.

Even in the multiethnic region of what is now modern day Hungary, Roma occupied a distinctly marginalized position. As Adam M. Warnke (1999) argues, from the time of their arrival to the present day, the history of Roma in the region presents a “continuous narrative of persecution” (p. 343). Often, anti-Roma sentiments manifested themselves in official policies that restricted the group’s cultural expression and citizen rights. In the following chapter, I will focus on the power relation between Roma and Hungarian political authorities to show the continuity of state interventions targeting the Roma as a marginalized identity.

The Roma migrated to Europe from probably northern India around the 12th century and entered the region of Hungary as early as the 14th century (Kemeny 2005, p. 1).

According to historian Kemeny (2005), the earliest document mentioning Roma listed them among other property owned by an aristocrat in Transylvania (ibid). Hungary actively traded Roma slaves from the mid-14th century on (Warnke, 1999, p. 342).

Therefore, Roma were recognized as a distinct group upon arrival, which led to their occupation of an at times sub-human status within society. This construction of the strangers as livestock directly benefitted persons on top of the societal hierarchy; in this case, part of the nobility. The ruling elite, then, assigned the identity of slaves to certain Roma based on their perceived difference for specific political purposes, such as the economic benefit of free labor.

This position changed as the primary challenge of the Hungarian territory shifted from the acquisition of a cheap workforce to the defense against a foreign military threat. When the army of the Ottoman Empire attacked the area in the 15th and 16th century, Roma found their niche employment in the war industry (Kemeny 2005, p. 4). However, even when integrated into the defense effort, Roma usually took up the work majority Hungarian refused to perform, without the hope of moving up the ranks. Roma worked as foot-soldiers, cleaned up streets and sewers, dug graves, executed prisoners, or manufactured weapons (ibid, p. 6). Documents from that time show that Roma also paid taxes, albeit in a specific bracket designed for them (ibid). This indicates that while useful to the maintenance of the local power structure, Roma still occupied a segregated position that differentiated them from regular citizens. The kind of occupation Roma took up suggests that this societal position did not only place them apart from the majority, but routinely also below them. The relational location of Roma as generally towards the bottom of the societal hierarchy, then, remained constant even when performing a variety of tasks as free laborers. While paid occupations mark an improvement from slavery, the ruling elite still constituted the main beneficiary, as the precarious situation of the Roma led them to accept undesirable but necessary jobs that facilitated the functioning of the power structure in times of war.

In the following two centuries, Roma spread throughout Hungary, usually making a living by filling a niche need of the localities they arrived at. This included seasonal agricultural work, a continuation of the blacksmith tradition established during the war, playing music, or other manual day-labor. Thus, Roma's livelihood remained insecure and depended usually on remaining flexible rather than specializing in the kind of work

they were able to offer. This need to provide for the requests of regular citizens as they come up, however, produced living conditions that reinforced the Roma's position on the margins of society. A Hungarian state official, in a plea for charity, described their situation as follows in a letter to his superiors in the year 1603:

(...) they live their usually sorrowful lives according to ancient tradition in tents made of rags, which they erect in the fields and meadows outside cities; and the old, young, children and infants of the clan have thus learnt how to put up with the rain, the freezing cold and the sweltering heat outside the walls of a house, to do without any birthright in this world, not to enter towns, castles, and market-towns, not to fall under royal patronage, but instead, moving back and forth between their uncertain settlements, knowing nothing of economy, having no kind of ambition, and just living from one day to the next and from one hour to the next, they earn their food and clothing by the work of their two hands under God's free sky.
(qtd. in Kemeny 2005, p. 11)

While the author most likely exaggerated the grim image of Roma life in order to obtain remedies from the authorities, the text does show a perspective that views Roma as incapable of organizing their lives due to their own short-comings in education and willpower. Even when merely considering the purely descriptive parts of the letter, it becomes clear that Roma still inhabited a very visible outsider status that caused a deteriorating effect on their existence: Living outside of cities created a physical space that was both distinctly Roma and visibly inferior to the quality of housing within city walls. On the other hand, this position made life outside of the organizational structure of "royal patronage" possible, which may have contributed to the Roma's ability to evade some aspects of hegemonic control. Irrespective of the motivation of individual groupings under the label "Roma", the document shows that elitist elements perceived Roma as not only living a distinctly different lifestyle, but an inferior one. While the author of the letter explicitly sought to aid the Roma, his words still support the idea of

Roma identity as problematic and in need of top-down intervention.

In 1753, Hungarian royalty attempted to bring the Roma under the control of the state with a series of new laws. Under the leadership of first Maria Theresa, and later, her son Joseph II, officials began to collect information about the population as a whole, with the goal

to count, record and monitor everything and everyone, to classify the population and subordinate it to the purposes of the state, to settle all unsettled issues, and to regulate anything that was still unregulated.
(*Ibid*, p. 15)

The purpose of the census, then, was primarily one of social control rather than improving the situation of citizens. Rather than the state serving its people more effectively by gathering information about their living conditions, the Hungarian government aimed to know its subjects to maximize their usefulness to the political structure.

The decrees that followed reflected an attitude towards Roma as potentially disruptive elements in need of particular management from the highest authority. The monarchy forbade Roma most expressions of their cultural identity. The first decree disallowed traditional Roma clothing and forced Roma into a sedentary lifestyle (*ibid*, p. 15). In addition, it placed them under the direct control of local Hungarian authorities, who were not allowed to issue passports to Roma (*ibid*). Begging or keeping horses was likewise outlawed (*ibid*). This meant that these new regulations disabled Roma from providing for themselves by disallowing their primary strategy of obtaining day-labor jobs by travelling around. Breeding horses formed an important source of income for some Roma who already were more settled, and thus, the decree effectively intended to destroy the business of the more integrated parts of the group. They had no representation in the

government that ruled over them, and without documents, no opportunity to legally leave the country.

The measures designed to facilitate Roma integration, on the other hand, served as little more than lip-service. Estates were supposed to provide the Roma with land to settle on as well as support them in the building of housing structures and the setting up of agricultural production (ibid). However, landowners had no incentive to follow the decree which only disadvantaged them, leaving the Roma homeless.

The following years only tightened the state's grip on Roma identity. In 1761, a decree outlawed the word "cigány" and declared that Roma would be referred to as "new Hungarians" or "new peasants" from then on (ibid, p. 16). About a decade later, a new law banned Roma from speaking their native tongue, outlawed them from marrying within their own ethnic group, and even declared that Roma children would be removed from their families at the age of four and placed with farmers (ibid). The decrees even forbade Roma to play music, illegalizing yet another form of cultural expression as well as an important source of revenue (ibid, p. 17). Therefore, every Roma decree passed in the second half of the 18th century targeted the Roma as a special identity within the Hungarian territory with the aim of erasing this identity. While much is unknown of the effectiveness of such interventions, the decrees show the desire of the government to act on behavior constructed as specifically Roma.

The perception of the Roma as existing at the peripheries of the social norm was exacerbated by their growing numbers in Hungary. Within a span of 53 years during the 19th century, the Roma population of Hungary doubled (ibid, p. 20). At the end of the century, Roma made up 1.8 percent of the population, as opposed to 1 percent in 1857

(ibid, p. 18). Such numbers may have evoked the impression that the Roma reproduce disproportionately much in comparison to majority Hungarians. However, the influx in Roma mainly derived from migration, hailing from a variety of places and linguistic groups (ibid, p. 21). This may have contributed to the obstacles of Roma integration, as new waves of non-Hungarian speakers distorted the impression of any assimilation progress.

The perception of a distinct otherness of the Roma again prompted the state to develop special measures in addressing them as a single identity. In 1892, Károly Hieronymi became Minister of Interior, ordering a census especially targeting Roma (ibid, p. 19). This shows that Hungarian authorities developed strategies to gather information about the Roma as a group, which they subsequently used to intervene in that specific identity. Hieronymi's stated as his goal "to settle, at national level, the issue of vagrancy and also to sedentarize vagrant Roma." As with the previous decrees, then, the minister attempted to develop strategies of social control specifically tailored towards Roma. The census found an already large number of settled Roma, most of which lived in segregated communities apart from the general population (ibid, p. 29). This seemed to be a consequence of the settling efforts of previous governments in combination with the obstacles of integrating into majority communities previously described.

Similarly, the class status of most of the Roma population also remained stagnant. Roma still took up any odd job others would pay them to perform, causing an unsteady stream of income. As contemporary Lajos Kiss (qtd. in ibid) described, "They will do anything and they are good for anything. The day-laborers are in the most uncertain position; they are lucky to find work on 200 days in any given year" (p. 33). The Roma's willingness to

accept any job offer shows the precariousness of their situation, as well as their discipline to constantly search for positions and learning new skills in order to fill them. On the other hand, the fact that even with the greatest efforts most Roma found themselves out of work three to four months out of the year may have contributed to the impression of Roma as not applying themselves enough.

Along the same lines, this class position also informed family planning. While they are no exact figures of the amount of children in an average Roma family in the 19th century, historians claim that households were indeed numerous. As again Kiss (*ibid*) observed, “the women are permanently pregnant; if their husbands merely touch their hats, they fall pregnant.” This somewhat tongue-in-cheek way of describing reality how he sees it still indicates that majority Hungarians held the impression that Roma families reproduce disproportionately much compared to majority citizens. This view probably worked in a mutually affirming dynamic with the general swelling of the Roma population due new waves of immigration. However, when controlled for class belonging, Roma families lay in the average for day- and agricultural workers and other low-class Hungarians especially in the countryside, meaning that Roma conceived no more children than typical within their socio-economic strata, as poorer families generally tended to use their numerous children as a cheap labor force (*ibid*, p. 34).

The Roma, then, constituted an identity category consistently associated with a lower class belonging as well as specific behaviors and locations that distinguished them from the majority magyar population. This status prompted a variety of interventions by the state, which mostly worked to the advantage of the state at the disadvantage of the Roma. The identification and targeting of the Hungarian Roma as a group by the authorities also

rendered them an apparent target of totalitarian agendas.

Already during the 1920, fascist and nationalistic ideas started to gain track in Hungary and the rest of Europe. A decree of 1928, for example, called for the “(raiding of) Roma communities” stating that,

whether they practice migration in order to avoid work, or do so under the pretext of looking for work, the forces of public order are obliged to arrest and detain them where they are found and then to deposit them at the nearest police headquarters.
(*ibid*, p. 47).

Again, Roma were denied the simple citizen right of free movement, even if it meant drastically reducing their ability to provide for themselves. Therefore, the state only allowed Roma in specific, state-assigned spaces, making their presence in any other location punishable by law.

During the Holocaust, Hungarian officials collaborated with Nazi forces with the goal of eradicating the Roma population of Europe in its entirety. Without a doubt, the settlement and segregation of Hungarian Roma facilitated their transportation to death camps. The organization “Victims of Nazism Commission” pin-pointed the death toll at about 28,000 for Hungarian Roma alone (*ibid*, p. 48). Therefore, at the beginning of the demise of Roma Holocaust victims stood their identification as distinctly different from the normative populace, and subsequently, the construction of this identity as sub-human and unworthy of the protection the state grants to citizens. The deliberate sacrifice of divergent identities within the nation state to the Nazi regime served several political purposes. One, it affirmed the Hungarian government’s intention to collaborate by contributing the bodies of certain parts of the populace to the genocidal project of the Nazi regime. This helped solidified the position of Hungary’s political leadership of the

time. Two, the offering of certain bodies to the death camps aided in protecting the lives of those considered more fully human. This demonstrated the government's ability to protect its citizens from harm by outside forces. Third, as previous Hungarian governments had attempted to eliminate Roma by eradicating all expressions of cultural distinction, the Holocaust undertook the same project through the strategy of mass murder. Therefore, the state used Roma and other deviant identities to the benefit of the norm and to the detriment of those labeled as different.

When the regime changed again, this time to a communist form of statehood, the Roma position within Hungarian society still remained consistently distinct and subject to state intervention. In the post-1945 era, the communist regime in Hungary attempted to integrate the remaining Roma through forced settlements in integrated working-class neighborhoods and subjected them to mandatory work in the state-run factories (Greenberg 2010, p. 928). On one hand, the state dictated once again where Roma had to live, and more so, forced them to work in factories for the benefit of the socialist state (ibid). On the other hand, some Roma appreciated the provision of decent housing in an integrated neighborhood with a secure way of providing for themselves and their families (ibid). As Kemeny points out, however, the positive aspects of state intervention were diluted in the rural areas where industry played little to no role (2005, p. 54).

In the countryside, socialist measures of land-redistribution hardly affected Roma communities. While majority Hungarian without property received land, the state did not include Roma in the new policies (Kemeny 2005, p. 49). Hence, although urban Roma experienced full and steady employment and living amongst rather than apart from majority Hungarians for the first time, the positive aspects of communist state directory

only reached part of the Roma population, and came at the price of authoritative control.

The low-skill employment opportunities under the communist regime failed to prepare Roma for a job market that increasingly required professional training from their employees. When it came to education, the Roma remained an underclass. The census of 1971 showed that a third of all hungarophone Roma and over half of those speaking Romani or Beás were illiterate (Kemeny 2005, p. 52). This prevented most from obtaining employment apart from low-skill manual labor, leading to hikes in Roma unemployment after the breakdown of the industrial sector in Hungary.

The fall of socialism around 1989 soon undid any potentially positive aspects from communism for the Roma. Greenberg (2010) found that in Hungary, “two-thirds of the jobs that Roma had occupied under the socialist system were wiped out during the transition” (928). Majority Hungarians left the neighborhoods around the closing factories in search for better job opportunities and housing options (ibid). The Roma were left behind, creating again segregated neighborhoods that put them once more at the literal margins of the Hungarian state (ibid). In 2003, 72 percent of Hungarian Roma lived segregated from the general populace (ibid). This physical location separates many Roma from job and educational opportunities, which in turn prevents them from obtaining the financial or educational resources necessary to compete in a more promising job market. It is this politically constructed physical position that produces the oppression of Roma in other sectors, forming an interrelated system that perpetuates marginalization.

CONTEMPORARY CONTEXT

The marginalized position contemporary Hungarian Roma take up particularly in the areas of housing, education and employment, then, marks the continuity of their inferior position within the nation state. In Hungary, over half of those living under permanent poverty are Roma, while the poverty rate for the overall population hovers around 7.5 percent (White 2012, p. 55). According to the Hungarian non-governmental organization Roma Education Fund, “in 2003, 28.1 percent of Romani men aged 15–74 were employed, compared to 56.5 percent of the overall male population; 15.1 percent of Romani women were employed, compared to 43.7 percent of the total female population” (ibid). Thus, Roma communities do not only suffer lower employment rates in general, but in addition, have a higher probability of living in single-earner families, usually depending on the income of the male.

The lack of employment opportunities in Roma settlements plays an important role in producing these numbers. With the abolition of many low-skill labor jobs at the end of communism, education became increasingly more a prerequisite for entering the labor market.

While school segregation is known to be a widespread problem, exact numbers are difficult to come by, as the state of Hungary does not include ethnic identity in their census anymore (Greenberg 2010, p. 926). The decentralized nature of the Hungarian educational landscape likewise complicates integration efforts, as local players within the 3000 school districts hold significant sway over schools (ibid, p. 962).

More is known about the results of the inferior education of Roma children: Roma students are about nine times more likely to drop out of school after primary school than

their majority peers (White 2012, p. 55). Most Roma (63.8 percent) finish their education after a short-term vocational training, which prepares them for low-skill labor (ibid).

Only 5.6 percent of Roma children reach a 4-year high school level, as opposed to almost a quarter of other Hungarian children (ibid). The Roma Education Fund estimates that only about 2 percent of Roma complete a university education (Greenberg 2010, p. 934).

At the “Göllesz Viktor Remedial Primary and Vocational School” that both plaintiffs attended, the proportion of Roma students hovered around 40 to 50 percent from 2002 until the middle of the court case in 2012, while Roma make up not even nine percent of elementary school students in the litigators’ hometown of Nyíregyháza (HUDOC, par. 7).

All students sorted into special education schools had previously been diagnosed as mentally disabled through the use of mental tests, which resulted in the overrepresentation of Roma students in such institutions. All mental tests arrange students along a numerical scale, commonly known as the intelligence quotient. A quotient of 100 marks the average mental ability in any given population. How far student can score below this norm however, depends on the opinion of local authorities. In the case of Hungary, an IQ of 86 or lower is defined as an inferior intellect (HUDOC par. 86).

The slanted test results provoked a period of extensive re-evaluation of students in the first half of the 1970s (ibid). During this period experts found that over half of the students diagnosed as mentally disabled passed as normally intelligent according to the standard of the World Health Organization (WHO), which sets the cut-off score at 70 (ibid, par. 10). To justify to continuous education of normally able students in spaces allegedly reserved for the mentally challenged, Hungary argued for including “familial

intellectual ability” as a valid reason for segregation (ibid). This category includes children as disabled that do not show pathological problems, but who come from an, according to state authorities, problematic family backgrounds that inhibit their ability to successfully undergo a mainstream education.

Officially, Hungarian law forbids the ethnic segregation of schools (Greenberg 2010, p. 938). While school integration in Hungary faces a myriad of obstacles, NGOs and players at the EU level question the state’s commitment to end educational discrimination against Roma (ibid). While no other country in the region shows more commitment to equality than Hungary on paper, the ECHR points to Hungary’s passivity in the implementation of desegregation laws (ibid, p. 963). Hungarian Minister of Human Resources Zoltán Balog currently attempts to revise Hungary’s Public Education Act of 2011 to allow school segregation in some cases (Tóth 2014, “Some Hungarian schools to remain segregated”). While Hungarian politics met school integration mainly with official promises for betterment and at times open resistance, the state actively facilitates the disproportioned diagnosis of Roma children as mentally disabled, and their subsequent separation into special education schools.

While constituting at the highest estimates 6 percent of the population (Greenberg 2010, 934), Roma students constitute between 20 to 90 percent of pupils in special education schools in Hungary (White, 2012, p. 56). School segregation based on ethnic identity triggered a number of domestic court cases in Hungary.

The most important precedent for the case *Horváth and Kiss v. Hungary*, however, is the 2007 ruling on *D.H. v. Czech Republic* by the ECHR. The Czech case challenged the practice of streaming allegedly mentally disabled (again diagnosed primarily via below-

average scores on intelligence tests) Roma students into special schools under the same Article 2 of Protocol No. 1 later used in the Hungarian case (*D.H. v. Czech Republic, Horváth and Kiss v. Hungary*). While the court fell short in ordering concrete steps to mitigate such situations in the future, it did rule in favor of the plaintiffs. Specifically, the judges rejected all three arguments of the defense, namely that “(1) the Roma students placed in those schools were mentally impaired; (2) their parents had consented to the placements; and (3) plaintiffs relied on flawed statistical analysis to show disparate impact” (Greenberg 2010, p. 940). The court thus ruled the segregation unjustified.

The Czech case based on the EU anti-discrimination article prompted NGOs in Hungary to likewise choose a legal strategy in order to push for social change. According to Greenberg (2010), Hungary experienced around a dozen domestic court cases aimed at improving educational access for Roma students based on the European Union “Race Equality Directive” (p. 938). At least officially, Hungary has the most egalitarian laws in the region (*ibid*). Partially as a consequence of EU admission criteria issued already in the year 2000, Hungary adopted laws outlawing racial discrimination in general and educational segregation in particular (*ibid*, p. 921). Rather than changing laws, then, Hungarian NGOs attempted to force authorities to implement them effectively. Taking the issue to the EU level can be seen as a strategy of putting external pressure on the Hungarian government to take up an active role in combating discrimination.

On the other hand, educational segregation in Hungary presents a complex and interrelated issue rather than a problem with one homogeneously applied solution, which limits the scope of what a single court case can achieve. There are three main forms of school segregation in Hungary (*ibid*, 962): The first is born out of the previously

mentioned history of segregated Romani settlements, which often leads to sub-standard educational opportunities as opposed to majority Hungarian neighborhoods (ibid). The second presents a form of segregation within schools, coming from a practice that separates students with allegedly higher or lower abilities into different classes, creating a de-facto racially segregated learning environment in a single building (ibid). The third form channels particularly Roma students into completely separated special education institutions based mainly on mental test scores during their first years of primary school (ibid).

The court case *Horváth and Kiss v. Hungary* that is the focus of this thesis addresses the latter form of educational segregation.

Throughout the Roma's history in the territory of Hungary, their figurative and physical location at the margins of normative society remains constant. State authorities applied technologies such as censuses and mental testing to identify Roma as deviant subjects. This knowledge facilitated the targeting of behavior deemed distinctly Roma, such as mobility, music making, begging, or speaking Roma languages. While most strategies intended to curb Roma cultural expression, some guided Roma into accepting roles most convenient for the governing body of the time, such as working as soldiers or blacksmiths during war times. Any such state intervention on Roma identities served a specific political goal by the state, for instance, the conforming of Roma people to a normative model of citizenship or their use as a cheap workforce willing to perform stigmatized labor.

The historical reproduction of their physically marginalized position naturalizes this location for Roma, hence reinforcing the effects and consequences of marginalization

through time. The inaction of the Hungarian state to actively desegregate Roma neighborhoods, then, is highly political.

In the next chapter, I will lay out how mental testing became part of biopolitics. I will first show how mental testing came to its widespread use as a technology of social control popularized by the eugenics movement. I will then pay special attention to the Binet- and Raven test as the main diagnostic tools in the case *Horváth and Kiss v. Hungary*. Subsequently, I will draw the connections between mental testing as a technology of knowing a subject and the court case, showing how the student's identity as Roma intersected with intelligence tests to create their identity as mentally disabled. I will then analyze how the students negotiate this identity through the legal system of the European Union.

I KNOW IT'S TRUE THAT VISIONS ARE SELDOM ALL THEY SEEM: MENTAL TESTING AS A TECHNOLOGY OF KNOWING A SUBJECT

Both the plaintiffs and the Hungarian government founded much of their argument whether or not the two Roma men have been justifiably segregated into schools for the mentally disabled on the results of intelligence tests. Both boys had been diagnosed as mentally disabled at the age of seven through the use of intelligence tests, and both have later scored normal results while being examined by independent experts in 2005. The same mental tests designating the same students as disabled and normal, then, show the instability of the categories.

In 2001, the first litigant Horváth started his education directly in a school for special needs children, the Göllesz Viktor Remedial Primary and Vocational School (HUDOC, par. 16). His nursery informed the Expert Panel of the county, who are responsible for mental testing, that Horváth displayed below average abilities (*ibid*). He scored 64 on the Budapest Binet Test, 83 on the Coloured Raven Test, and 67 on the less widely used Goodenough draw-a-person Test (*ibid*, par. 17).

The second plaintiff Kiss initially began his schooling at a mainstream school in 1999 (*ibid*, par.25). Kiss lived, like Horváth, in Nyíregyháza. A year later, he scored 63 on the Budapest Binet Test and 83 on Coloured Raven test (*ibid*, par. 26). Despite the protest of his parents, the Expert Panel subsequently moved Kiss into the same so-called remedial school Horváth attended (*ibid*, par. 27).

While the World Health Organization established the cut-off line for mental disability at 70, Hungarian authorities set the minimum intelligence quotient a student needs to possess in order to gain access to mainstream education at 86 (*ibid*, par. 18). Thus, the

Expert Panel diagnosed both students with a “mild mental disability”, claiming the boys were over two years behind in their development (ibid, par. 18, 26). However, at a 2005 summer camp for mentally challenged children, Kiss surpassed this limit with a score of 90 on the Raven Test, while Horváth only barely missed the mark with a result of 83 (ibid, par. 31). This prompted the evaluators to declare Kiss as having normal capabilities, and Horváth as being only slightly below average, clearing both of the diagnosis of being “mentally disabled” (ibid, par. 32, 33).

The suing party, represented by attorney Lilla Farkas and the NGO the European Roma Rights Centre, initially attempted to convince the court that the methodology used to facilitate educational segregation in Hungary was in itself flawed. At the heart of the (according to the plaintiff’s argument) false identification of students as mentally disabled stood the scientific method through which the authorities determined a disability: the intelligence tests themselves (Farkas& Gergely 2012, par. 24).

However, the ECHR stated it could not decide whether or not the tests presented a legitimate diagnostic tool to stream children into segregated schools because the litigators had not exhausted all domestic remedies (HUDOC, par. 1). On the other hand, the court recognized the discrepancy between the different test scores as well as the controversial nature of utilizing intelligence tests to categorize people (ibid, par. 119).

The intelligence tests used in the case come from a complicated history reaching back one hundred years. In the following section, I will discuss the history of intelligence research.

Through this approach, I will show that first, the single score intelligence test used in the case came from a history of scientific racism and classism. Members of the eugenics

movement used intelligence tests in the 20th century to support their claim for the objective superiority of the white upper class, especially in the United States. Secondly, the mass scale application of intelligence tests aimed to function as a tool for social control. Therefore, IQ tests specifically were not developed for the benefit of students. Thirdly, all research claiming to measure an innate intelligence failed to follow the scientific method and based its conclusions on a gravely flawed methodology. This scenario was so consistent that most psychologists working on the subject had to eventually admit to the inadmissibility of their own research. And lastly, the demarcations between the categories of the feeble-minded and normal intelligence dependent on researcher, societal and historical context, and thus varied greatly throughout the decades. No clear definition about what constitutes unintelligence existed, and psychologists chose the scores designating mental retardation arbitrarily.

THE IQ TEST AND THE EUGENICS MOVEMENT: “SCIENCE” AS A TOOL FOR SOCIAL CONTROL

The turn of the century marked a period of social and political uproar. European nations faced a three-fold threat from independence movements in their colonies, a fierce intra-European competition, and the breaking down of class boundaries with the emergence of a middle class after the industrial revolution within the individual nations. For Britain most of all, “falling birth rate, war, upheaval of masses, competition between nations, all fuelled the fire”, making the question of what makes a group fail or succeed all the more pressing (Moore 2004, p. 277).

European nations based their claim for hegemony in the world on their alleged superiority over, in their worldview, more savage places. Especially the superiority of

intellect became important when arguing for the rightful rule of the white man over the world. As progress began to threaten the old world order, science became a tool with which to “objectively” reestablish the old boundaries.

One example that illustrates the connection between science and patriarchal white-supremacist hierarchies comes from French scientist Paul Broca (1824- 1880), who argued in 1861 that brain size determined intelligence. In pedantic measurements, he found that the European middle-aged male possessed the largest skull volume, concluding that a greater brain meant greater intellectual capacities (Gould 1992, p. 83). Broca himself extended his argument to the colonizing process, writing that, “A group with black skin, woolly hair and a prognathous face has never been able to raise itself spontaneously to civilization” (qtd. in Gould 2008, p. 84). Hence, this early attempt to determine intelligence through scientific measurements reinforced the idea of European males as intellectually superior, which turned into a political argument against the social justice movements of its time that threatened the status quo.

Broca’s work on measuring intelligence scientifically attracted his countryman Alfred Binet, who would later pen the first intelligence test (Gould 2008, p. 176). Binet followed his colleague’s method meticulously, but soon voiced frustration over his inability to reproduce Broca’s results (ibid). Initially expecting to support the previous findings on the measurement of skulls, Binet now dismissed any connection between brain size and intelligence (ibid).

To Binet, the attempt to objectively determine intellectual capacities by sizing the cranium of a person resulted in failure, prompting him to think of alternatives. In 1904, the French government asked Binet to develop a method of identifying students in need

for extra educational support (Ibid, p. 79). In the next two years, Binet worked on a mental test that measured a variety of skills with the goal of determining a student's overall intellectual ability "with a single score". (ibid). The Binet test included tasks that its creator found necessary to master at specific ages to function within society, such as counting money or making claims about the attractiveness of women in pictures (ibid). In consequence, each test subject received a "mental age" in accordance with how many assignments he or she could complete successfully (ibid). Depending on discrepancies between the biological age and mental age of the student, test administrators were able to make claims whether or not someone was behind, or ahead, in their development. The test, then, strictly did not measure intelligence, but how well students conformed to culturally specific normative expectations.

The same year Binet started his research for the ministry of education, British psychologist Carl Spearman published a paper on the heredibility of intelligence that introduced the so-called g factor. Spearman argued that an innate, hereditary intelligence could be objectively measured through a variety of tasks, including timing a subject's physical reaction time to different stimuli. (Sutherland 1977, p. 136). To Spearman, all intelligence came from the same basic source within the human mind, and any ability was an expression of said general intelligence. As contemporary hereditarian Richard Lynn (2006) writes, "(...) Spearman proposed that there must be some general mental power determining performance on all cognitive tasks and responsible for their positive inter-correlation" (p. 29). In other words, testing certain cognitive processes allowed a tester to make claims about a person's overall intelligence, since all expressions of intelligence came from the same source in the brain. As opposed to Binet, Spearman's test gave no

information about a subject's strengths or weaknesses, and therefore could only serve to stream persons into categories of varying mental retardations. The differences between the functionality of the tests derived from the fact that Binet and Spearman designed their respective tests with differing end-goals: Binet aimed to create a method to identify areas of deficiency as it related to the specific cultural and age-appropriate demands on a student in order to remedy said deficits. Spearman, on the other hand, wanted to create a tool capable of identifying degenerates.

Both psychologists entered the field of intelligence research by investigating physiological differences to make claims about an inherent intellectual hierarchy between genders, classes, and races. Spearman's work, however, never transcended that initial step due to its sole purpose of aiding categorization from the top down, rather than working for the benefit of the subjects themselves.

Spearman was greatly influenced by eugenicist Francis Galton. Galton, a cousin of Charles Darwin, proposed a model of "hard-inheritance", claiming that offspring inherited ability from the parent generation rather than acquire it. (Moore 2004, p. 270). Inferior parents, then, would inevitably produce an inferior filial generation. As each nation's superior status depended on the quality of its people, the perceived disproportioned reproduction of the lower classes as opposed to the elite produced a now scientifically backed anxiety about the future of civilization:

As slavery was abolished and the role of freed blacks became a political and social issue, as industrialization brought about new social mobility and class tensions, and new anxieties about the "proper" place of different class, national, and ethnic groups in society, racial biology provided a model for the analysis of the distances that were "natural" between human groups.
(Stephan 1985, p. 98)

Former slaves, the working class, and women demanded citizen rights that used to be the privilege of upper class males, threatening a world order that in the view of the elite was the source of stability and prosperity within the nation state. The uncontrolled and massive reproduction of the inferior in particular, Galton was sure, would inevitably leave the nation in shambles: “the time may come”, Galton warned, when inferior people procreating were considered “enemies of the state (...) forfeited all claims to kindness” (qtd. in Moore 2004, p. 272). Science, once again, seemed to support Galton’s concerns: Mendel’s rules of inheritance, re-discovered in 1900, combined with Darwin’s theory of evolution, formed the scientific explanation eugenicists used to push their political agenda (Stephan 1985, p. 106). Mendel showed through genetics what Galton and his cousin Darwin had feared: that filial generations did inherit traits from their parents (ibid). Undesirable traits such as the idiocy Galton found so ubiquitous in his time, then, would spread more and more from generation to generation like an illness taking hold of a body, eventually rendering it incapable of functioning at all. As a remedy, Galton proposed a national eugenics program (Moore 2004, p. 173). Such a program would promote the birth of desirable subjects and control the birth rate of the intellectually inferior to improve the population as a whole. The methods by which this outcome was to be achieved, however, was still subject to debate.

First and foremost, eugenicists were in need of a scientific tool with which to categorize people whose undesirable traits were not always readily apparent. Both Spearman and Binet provided a scientific tool fit to identify and segregate supposed mentally inferior persons from the general population, even if only Spearman created his test specifically for this purpose.

In fact, Binet argued emphatically against the misappropriation of his test for the purpose of stratifying test subjects into a rigid binary of able and disabled:

They seem to reason in the following way: 'Here is an excellent opportunity for getting rid of all the children who trouble us,' and without the true critical spirit, they designate all who are unruly, or disinterested in the school.
(Binet in Gould 2008, p. 181).

He feared that educators could use the test results as an excuse to deem students lost cases, consequently denying them instruction. Binet freely acknowledged the limits of his own work, doubting that any test could do anything more but to point to a student's potential to succeed at school rather than making claims over their overall ability:

The scale, properly speaking, does not permit the measure of the intelligence, because intellectual qualities are not superposable, and therefore cannot be measured as linear surfaces are measured.
(*ibid*)

He rejected the idea that a human being's fate should be determined by a single number, and increasingly worried about the misappropriation of his work for this purpose (*ibid*). As the eugenics movement gained ground especially throughout Europe and the United States, the reductionist view on the human mind that Binet opposed became the most convenient method of arranging test subjects on a hierarchal scale. In 1912, German psychologist Wilhelm Stern attempted to harmonize the elements of the Binet test and Spearman's g factor into a singular, simplified result. Stern coined the result "Intelligence Quotient", or "IQ" for short: a single number "used to describe the potential of one individual and contrast him with any other" individual by dividing the mental age assigned through testing by the biological age of the test subject, multiplied by 100 (Sutherland 1977, p. 137). Similar to Spearman's work, the intelligence quotient gave no information about weaknesses in a person's education in order to remedy them, but

rather, facilitated and simplified the political project of the eugenics movement through scientific means.

The concept of the I.Q. soon gained popularity among hereditarians in the United States, who used intelligence tests as a tool for social control. As Gould (2008) argued, when eugenicists appropriated intelligence tests for their political agenda, test scores turned into a deterministic, inescapable designation:

Hereditarians view their measures of intelligence as markers of permanent, inborn limits. Children, so labeled, should be sorted, trained according to their inheritance and channeled into professions appropriate for their biology. Mental testing becomes a theory of limits.
(Gould 2008, p. 182-183)

The tests promised the great potential of identifying the proper place of each and every citizen, using human being to their maximum potential while curbing disruptive elements, all for the good of the nation. From this potential of social control, intelligence tests derived their power, and through their power, intelligence tests became immensely interesting to psychologists, politicians, and lay people.

Henry H. Goddard, director of research at the Vineland Training School for Feeble-Minded Girls and Boys in New Jersey, together with psychologists Lewis M. Terman and Robert Yerkes became the leading figures of intelligence research in the states, which eventually would establish hegemony in the field worldwide (Gould 2008, p. 188, p. 204). Both Terman and Goddard belonged to eugenicist societies named after Francis Galton. Yerkes served as “Chairman for the Committee on Inheritance of Mental Traits of the Eugenics Research Association” from 1917 on, the same year he took up the presidency of the American Psychological Association (Kamin 1974, p. 396). Therefore, their research positions themselves form a clear ideologically motivated standpoint,

driven by the desire to prove their claim of the heredity of intelligence:

The hereditarian interpretation shared by Terman, Goddard, and Yerkes did not arise as a consequence of the collection of I.Q. data. Their involvement in the eugenics movement predated the collection of such data. (ibid, p. 398)

Intelligence tests presented the tool that granted Goddard and his colleagues significant power: On one hand, they established the “menace” of the feeble-minded by predicting the degeneration of entire nations through their uncontrolled reproduction. On the other hand, they offered with mental testing the cure-all for the very fear they had just invoked. Goddard, by establishing the category of the “moron”, for example, made sure to reaffirm this power by claiming that the mentally degenerate who are not instantly apparent would threaten the continuation of the species most: The “menace of the feeble-minded” came not primarily through their existence, but their untamed ability to reproduce. While the category of “idiot” and “imbeciles” were mostly found in institutions due to their obvious defect, “morons” moved within society, potentially unnoticed (Gould 2008, p. 188). This invisible “enemy within”, Goddard claimed, could be made visible through the Binet test. Goddard based his claims on research using faulty methods and even manipulating data, while dismissing that the environment could influence the results in any way. Addressing the worries of politicians of increasing waves of immigrants coming to America’s shores, Goddard let women, to his mind more intuitive in identifying the feeble-minded, test newcomers literally fresh off the boat on Ellis Island:

Goddard's women tested thirty-five Jews, twenty-two Hungarians, fifty Italians, and forty-five Russians. Binet tests on the four groups led to an astounding result: 83 percent of the Jews, 80 percent of the Hungarians, 79 percent of the Italians, and 87 percent of the Russians were feeble-minded— that is, below age twelve on the Binet scale. (Gould, 2008, p. 195-196)

The flaws of this approach are readily apparent: the scope of the study, the selection of untrained researchers using their “intuition” to choose subjects, the lack of quality control and above all, the impossible setting of an immigrant port filled with disoriented, tired and potentially terrified non-native speakers (Gould 2008, p. 196). Based on these results, the United States increased deportation due to “mental deficiency” 350 percent in 1913, augmenting it to 570 percent in 1914 (ibid, p. 198).

In the wake of WWI, deportation back to the soon-to-be war-torn Europe presented a direct threat to the lives of immigrants. This policy continued in the decade preceding WWII, indirectly condemning Jewish refugees to death by sending them back to Germany due to their alleged mental incapacity (ibid, p. 263). Thus, intelligence testing was used as a political tool to curb the nation’s infiltration by those considered mentally defective, with deadly consequences for some, while lacking any real scientific foundation.

Still, for Goddard and his colleagues, keeping so-called degenerates out of the country and contained in segregated institutions within the nation did not only protect the biological stock from harmful elements, but presented a matter of national safety, as the link between criminality and feeble-mindedness seemed apparent:

*Many criminals, most alcoholics and prostitutes, and even the "ne'er do wells" who simply don't fit in, are morons: "We know what feeble-mindedness is, and we have come to suspect all persons who are incapable of adapting themselves to their environment and living up to the conventions of society or acting sensibly, of being feeble-minded."
(qtd. in ibid, 191)*

Mental testing, thus, became a tool for nation building according to eugenicist principles, striving to keep the national realm as free of unwanted elements as possible.

While Goddard and his colleagues, like Darwin and Galton, also considered sterilization

as a remedy, he favored the institutionalization of the feeble-minded as the most practical option (ibid). His policy proposals, then, presented more logically a product of his ideology as a eugenicist, in direct congruence with what Galton had proposed years before Goddard undertook his research projects.

Similarly, Goddard advocated the idea that intelligence is hereditary despite an absence of evidence (Kamin 1974, p. 398). Goddard set out to lend credibility to the eugenicist idea of heredity by observing a single supposedly degenerate family, the Kallikas (ibid, p. 201). While one family could hardly justify the conclusion that each human trait is inherited through a singular corresponding gene, Goddard even manipulated the data of his one case study, altering photographs of the family by “inserting heavy dark lines to give eyes and mouths their diabolical appearance” (ibid, p. 194). All in all, Goddard did not produce any study without grave methodological flaws.

In 1928, Goddard drastically reformed the beliefs he had built his career on: he now admitted that his category of the moron had included many of perfectly normal intellect, and that virtually all moronity could be remedied, even cured, through appropriate education. Going against the eugenics worldview, he now argued that morons need not be institutionalized (Gould 2008, p. 202). While Goddard still defended the concept of heredibility, he found that the intellectually inferior had indeed a place within society, given their proper training. Since society could find use in the moron, their reproduction became less of a threat (ibid, p. 204). Although Goddard maintained the basic dynamic of his categorical thinking, his amendments show that even one of the most ideologically determined proponents of hereditarianism had to accept the categories he had believed to be objectively proven as flexible and unstable: Mild mental retardation seemed more and

more a matter of environmental factors rather than biological determined.

Despite his colleagues' newfound perspective, Lewis M. Terman continued Goddard's work using the same methodology. However, his research became much more extensive. Terman's initial attraction to intelligence research mirrored the craniology that inducted Binet into the field: during his childhood, a phrenologist foretold him a bright future, making Terman sympathetic to arguments about the connection of skull anatomy and intellect (Gould 2008, p. 204).

While Goddard introduced the Binet test to the United States, it was Terman who first made plans to apply it on a massive scale. Terman aspired to testing the entire population of students in the United States in order to stream each into a position that best served the interests of the state (Gould 2008, p. 206). Following the eugenicist ideology, the goal was again to maximize the efficiency of human resources within the nation while simultaneously curbing the potential of disruption from undesired subjects. Terman advocated mental testing in capitalist terms, claiming "enormous losses from the employment of persons whose mental ability is not equal to the tasks they are expected to perform" (ibid, p. 211). Therefore, Terman suggested to assign each citizen a profession according to the single numerical score of his intelligence test. As Gould (2008) pointed out, such an approach would have inevitably reaffirm dominant hierarchal boundaries such as class and race, as low test results would deny people entrance to high-prestige professions (ibid).

The other side of the coin presented the eugenicist challenge of dealing with persons the test deemed useless to society. The discussion around so-called degenerates was always also framed around racist ideology:

No amount of school instruction will ever make them intelligent voters or capable citizens. . . . They represent the level of intelligence which is very, very common among Spanish-Indian and Mexican families of the Southwest and also among negroes. Their dullness seems to be racial, or at least inherent in the family stocks from which they came.
(Terman in *ibid*, p. 220)

Referring to the working class, Terman argued that poverty was a product of low intelligence, and therefore, viewed the stratification of society as the natural result of biological differences. He suggested that children falling into this category be “segregated in special classes” and given vocational training (*ibid*, p. 221).

Such measures gained popularity especially in the context of growing anxiety about the connection between criminality and low mental abilities. If not properly managed, those falling below the norm in intelligence would almost certainly turn into a safety threat. As Terman asserted, “Not all criminals are feeble-minded, but all feeble-minded persons are at least potential criminals” (*ibid*, p. 211). In 1917, the psychologist published an entire book playing into the trepidation of his time, entitled “The Menace of Feeble-Mindedness” (Kamin 1974, p. 393). In addition to class and race, Terman also claimed to be able to identify political dissonants with the help of intelligence tests, as retardation caused a wide variety of dangerous behavior. Without the intervention he proposed on the foundation of his test, Terman warned that degenerates would “drift easily into the ranks of the anti-social or join the army of Bolshevik” (Gould 2008, p. 212). Therefore, Terman advocated his test to the government as a powerful tool for nation building, evoking visions of a country run with the efficiency of a machine, discarding unnecessary and disruptive parts while placing together functional citizens in a manner most advantageous for the state.

Even during Terman’s time, critical voices warned against the implications of the

eugenicist's work. Pointing to the immense control psychologists could exercise over society with their claim to objectivity, journalist Walter Lippmann argued against the political use of the Binet test:

If he were really measuring intelligence, and if intelligence were a fixed hereditary quantity, it would be for him to say not only where to place each child in school, but also which children should go to high school, which to college, which into the professions, which into the manual trades and common labor. If the tester would make good his claim, he would soon occupy a position of power which no intellectual has held since the collapse of theocracy.
(Lippmann in *ibid*, p. 210)

Making the claim to objectively measure intelligence, and presenting intelligence as the fundamental factor of societal stratification and control, would put test administrators in the position of the architects of the nation itself.

Despite such concerns, Terman successfully popularized the Stanford-Binet test (*ibid*, p. 205). Terman, a professor at Stanford university at the time, revised several versions of Alfred Binet's original work. The significant alterations between each edition of the test as well as changes in the cut-off lines between mental disability (still phrased according to mental age) and adulthood casted doubt on the objective nature of Terman's science (*ibid*, p. 221). As Goddard before him, Terman rejected any considerations of environmental factors for the majority of his career (*ibid*, p. 222). While both consistently made inconvenient data match their ideology by explaining away incongruences, Terman, like his colleague, eventually came across numbers that left him puzzled: the more scores he collected, and the more he observed changes over the decades that came with historical shifts, the less vocal the psychologist became in his biological determinism of intellect (*ibid*). One finding bothered him in particular: while comparing rural and city children, Terman discovered that students from the countryside scored lower on his

intelligence test with increasing education. At the same time, lower class city pupils improved their results (ibid, p. 222). The scientist, then, encountered more and more instances in which the environment remained the only factor left to explain what he had observed. Without directly rebutting his previous work, Terman now proposed investigating the influence the cultural context of a test subject can have on the intelligence quotient (ibid). Coming from an ideologically charged bias, Terman, like Goddard, eventually arrived at an acknowledgement of the importance of education, both in its influence of initial test scores and as a remedy for student limping behind the average. The relationship between environment and heredity, and their respective effect on the outcomes of the Binet test, however, remained unknown.

Yerkes again continued the intelligence research of his predecessors with a purely hereditarian perspective, coming close to fulfilling Terman's vision of applying the Stanford-Binet test on a mass scale. The psychologist bemoaned the low prestige academia granted his young discipline, and set out to establish psychology as a "hard science" in line with physics or mathematics as opposed to the humanities (Gould, 2008, p. 222-223). Consequently, Goddard's and Terman's later admissions towards cultural influences on their research disrupted Yerkes' idea of a pure, objective measure of innate intelligence.

In the wake of World War I, Yerkes advocated mental testing as a tool to help the war effort. With support of the US government, the psychologist tested close to two million recruits, subsequently sorting them into categories from A to E (ibid, p. 224). Each soldier was to be streamed into a position that best corresponded with his intellectual ability, laying the groundwork to eventually classifying the entire population in a similar

fashion, mirroring Terman's initial vision (ibid, p. 225). As opposed to Binet, who received a request from the French Ministry of Education to develop an intelligence test for the benefit of struggling students, Yerkes, like his US colleagues, used the intelligence test as a political tool, again advocating its potential for social control to the highest rank in the national hierarchy.

The results of the army test once more stoked the fears of degeneration. Combining the findings in his own research with Terman's more limited research on students, Yerkes asserted that three quarters of the entire US population fell under the category of the moron, or worse (ibid, p. 254). This result alone should indicate grave errors in methodology; however, rather than encountering criticism for his work, Yerkes found enthusiastic supporters in government and academia. Columbia University trustee and American Museum of Natural History president Henry Fairfield Osborn, for example, praised the supposed revelation of the nation's failing intellectual capacity in 1923:

I believe those tests were worth what the war cost, even in human life, if they served to show clearly to our people the lack of intelligence in our country, and the degrees of intelligence in different races who are coming to us, in a way which no one can say is the result of prejudice. . . . We have learned once and for all that the negro is not like us. So in regard to many races and subraces in Europe we learned that some which we had believed possessed of an order of intelligence perhaps superior to ours [read Jews] were far inferior.
(Osborn in ibid, p. 261)

Again, mental testing served as an allegedly scientific and objective measure to support racist and classist arguments. The death of millions of mostly working class soldiers turned into a worthwhile sacrifice as long as research produced by the dynamic of war could now serve to uphold the status quo and curb civil rights efforts. Around the same time, journalist Cornelia James Cannon used Yerkes' finding that 89 percent of black American were "morons" to argue against integration, writing that, "(...) the education of

the whites and colored in separate schools may have justification other than that created by race prejudice” (ibid, p. 261). This racially charged climate set the stage for the 1924 Immigration Restriction Act, which cited the data from Yerkes’ military research to justify the turning away of thousands of immigrants, including Jews and other Asylum seekers during World War II (ibid, p. 262). Again, IQ tests led to government intervention in accordance with its vision of statehood, with at times disastrous consequences for the test subjects.

The Stanford-Binet test now exclusively served the political needs of its time, with findings from previous decades being selectively applied or ignored, depending on whether or not findings supported the authority of mental testing.

While Yerkes produced massive amounts of data, the psychologist reproduced much of the same severe methodological flaws of his antecessors. The most apparent error was the claim of conducting an intelligence test in the first place, as its original creator time and time again pointed to the impossibility of any test to measure an inherent intelligence.

Similar to Goddard’s work on Ellis Island, the test conditions on military bases were chaotic and uneven. As the researchers could not reproduce even close to the same testing environment during the different sessions, any data collected became useless for comparison (Gould 2008, p. 262). In addition, as Yerkes’ research assistant Carl Brigham would later argue, the tests for the differing categories simply measured different abilities, and were thus again not feasible to compare (ibid). Brigham likewise pointed out that the test’s scoring was unscientific, and the test itself culturally bias for native English speakers (ibid). A convinced hereditarian throughout his time working with his mentor, Brigham now deemed the data he helped collect entirely unusable.

Goddard, Terman and Yerkes, then, all worked from a eugenicist standpoint which produced an unconscious bias that rendered their findings unscientific. All versions of IQ tests since the original Binet were developed specifically as a political tool, and advocated as such to the US government. Both Goddard and Terman as well as Brigham who conducted the army research alongside Yerkes admitted to grave methodological flaws as well as amended a purely hereditarian view of intelligence. All pointed to education as having an influence on test results. And yet, one after the other tried to again prove their tests capable of sorting people alongside a hierarchy of intellect in accordance with one numerical score. Their claim to measure intelligence objectively, and the political use the scientists themselves proposed, granted them significant power and influence. Thus, Stanford-Binet test was created and used in the United States as a tool for social control that served to uphold the status quo through pseudo-scientific methods.

THE BUDAPEST BINET TEST IN THE CASE OF HORVÁTH AND KISS V. HUNGARY

The Stanford-Binet test remains the most influential diagnostic tool for mental disability worldwide to this day (White 2012, p. 29). In an attempt to curb some of the admitted cultural biases, psychologists adapted the test to the setting where it is applied. In the beginning of the 1970s, the Budapest-Binet was normed for school children in the capital (White 2012, p. 53). While this adaption eradicated the most obvious culturally determined elements such as specific places, the overall structure of the test remained the same.

The organization of the test features many of the elements eugenicists have introduced to intelligence research, while neglecting Binet's original design. The 1970s edition of the

Stanford-Binet test exclusively measures the general intelligence that was first introduced by Spearman (Becker 2003, p. 4). Test administrators assign this general intelligence through the use of Stern's Intelligence Quotient (*ibid*, p. 10). Binet attempted to create a test that would measure as many distinct tasks in sections as possible to identify the specific weaknesses in students. A single score derived from one general test marks students as deviant, normal, or above average, but cannot serve to identify the specific areas a child struggles with.

The scores that define mental disability again show themselves to be an unstable category. While newer versions of the Binet test beginning in 1986 also measured verbal, visual, abstract, and quantitative reasoning as well as the so-called "general intelligence", previous editions only tested the latter (Becker 2003, p. 4). The 2003 version added even more sub-sections such as working memory and differentiated between a verbal and non-verbal IQ, making it easier to pin-point specific developmental or learning difficulties (p. 4). The element of the g-factor, represented by a single score, however, remained (*ibid*). As the test expanded, researchers created conversion tables to transfer older scores to their equivalent on the more recent tests. As the psychologists themselves admitted, such an adaption proved difficult considering the different sections and the way in which they were weighed into a score (p. 10). While the average range remained similar between the 1970s version and the test's fifth edition, the two extremes of the IQ spectrum showed significant discrepancies. The scholars estimated that someone who had received a 55 on the earlier version would now score between 63 and 74; a result of 70 may now lie in the 75 to 82 range, and a formerly borderline intellect at 85 transferred into a 86 to 91, surpassing even the stricter Hungarian cut-off line for access to mainstream education

(ibid). Persons previously considered geniuses at a 145 IQ now received a score between 122 to 133, denoting an above average but not protégée-like intellect (ibid). The Binet test, then, varied greatly throughout time and editions not only when it came to defining the scores that marked mental disability and normal intelligence, but also in the method by which the scores themselves were determined. This again points to the IQ as an arbitrarily set standards rather than an objective measurement.

Besides the scoring and definition of categories, the test questions in themselves remain subject to scrutiny. The 1970s general test (Form L-M) tested knowledge, fluid reasoning, visual-spatial processing, quantitative reasoning, working memory, and short-term memory, although the amount of tasks referring to each element varied greatly (Becker 2003, p. 12).

One common criticism comes from the heavy use of language in the test. All elements rely on language to lesser or greater extends. The knowledge related questions, constituting forty percent of the L-M form, consist of comprehension questions (Becker 2003, p. 12). An examiner might ask a pre-school child why we have houses, or prompt it to complete the blank, “a brother is a boy, a sister is a ...”⁴. This means that close to half of the test referred to learned knowledge that is culturally bound. This makes sense considering that Binet tried to identify shortcomings of students in relation to a specific educational setting. Answering the questions in accordance with the normative cultural forces would facilitate the integration of students in this specific setting. However, this is not a measure of any innate form of intelligence, but more of a scale of conforming to dominant norms.

⁴ http://wps.prenhall.com/wps/media/objects/1929/1975322/t06_02.pdf

Questions regarding memory likewise heavily dependent on a child's ability to understand and produce the test language effectively. Such tasks require the test taker to repeat the last word or numbers the examiner tells the child (Becker 2003, p. 11). The visual-spatial processing usually requires children to copy shapes, either directly or by imagining what a paper might look like when folded a certain way (ibid). Especially the more abstract part of this exercise depends on the guidance of the administrator. Since human interaction cannot be standardized, even the least language heavy part of the test is subject to a margin of error that stemming from inefficient communication.

Language in itself is symbols through which humans present their culture. Even if a student spoke the test language natively, they might talk in a different dialect or slang. Such differences may affect the fluidity score, as deviations from the dominant dialect are routinely seen as markers of lower classes, which many connect with an inferior form of expression. The majority of Roma students speak two or even three languages (White 2012). Multilingual people often navigate the languages they speak, which are representative of different and at times competing cultural identities, by developing a form of creole speech patterns through the integration of words or speech rhythms of either language when talking. This, again, deviates from the cultural norm, meaning that a Roma student's above average language competencies might actually work to their disadvantage when it comes to IQ score, which is normed to the way majority Hungarian students in Budapest speak.

The tools with which experts conduct the Binet test have similar ties to a specific demographic. Roma children may not be used to sit-down tests at all that require them to work with pen and paper. Responding to an unfamiliar adult from a different culture may

intimidate the student. Attempting to mitigate these issues, test designers tried to frame the different tasks within the Binet test more in terms of games children play. For that reason, the Binet test used toys since its second edition to appeal more to younger children, a strategy following versions expanded on (Becker 2003, p. 7). However, as White (2012) pointed out, especially impoverished communities may not have access to the types of store-bought toys that form a normal part of the lives of majority children. Games likewise present expressions of individual cultures and are not without bias, meaning that some children might receive higher scores because of a higher familiarity with the logic behind the games in the test.

Test designers acknowledge all of the issues that limit the accuracy of the Binet test, a fact that prompted them to further research measures of intelligence and develop newer editions of the same test (Becker 2003). This means that the Expert Panel in Hungary deliberately utilizes an outdated Budapest-Binet test on Roma children from the countryside despite the fact that it was intended for majority children living in the capital in the 1970s.

RAVEN'S COLOURED PROGRESSIVE MATRICES (CPM)

The Raven tests constitute the second most popular IQ tests globally. Their creator John Raven published his first test battery in 1938 (White 2012, p. 29). The most recent edition of the Coloured Progressive Matrices stems from 1998 (ibid 2012). All Raven Tests, including the Raven Color test for children age five to eleven, measure intelligence nonverbally, which gave them the reputation to get around the cultural and language biases of the Binet test (ibid). However, like the Stanford-Binet scale, the Raven test hails

from the historical context of eugenicists creating measures of intelligence as a form of social control.

While Terman based his version on Alfred Binet's test, Raven's work is rooted in the research of his mentor Spearman. Raven focused on producing the "purest available measures of *g*", which he claimed to have achieved with the matrices (Raven 1989, p. 1). Therefore, the test's stated goal is to identify an innate level of intelligence within children, which can only function to stream them into fixed categories. Intelligence scholar Richard Lynn used the Raven test's claim as an objective tool of intellect to "scientifically prove" that black Americans display an at 85 on average lower intelligence than white US citizens (Lynn 1991). Such a score would place the entire US population of color in the category of borderline mental disability if Hungarian standards applied. Lynn (1991) expanded his research internationally, claiming that "Africans" scored even 10 points lower than black Americans using the Raven test. The scholar thus concluded that people of European descent were innately more intelligent than people with darker skin. Again, an intelligence test that offered to categorize people along a numerical scale became a tool for the construction and hierarchization of difference along racial lines. The grand scale generalization of categories such as "black" and "white" as well as the impossibility of producing comparable test conditions that already rendered Terman's work unusable already point to a politically motivated pseudo-science whose results not coincidentally serve as an argument for scientific racism. In addition, as with the Stanford-Binet, the Raven test itself proved to be unable to reproduce the same results even when applied in controlled environments.

One such type of study measures differences in scores over time, noting what is now

commonly known as the “Flynn Effect”. Political scientists James Flynn shows that IQ scores have improved globally over the decades of his research (Kamin 1998, p. 112).

Conducting studies in 14 countries, Flynn discovered an up to 25 point difference in the scores (ibid). On the other hand, children who took both earlier and later versions of the same test scored higher on the older edition, suggesting that test designers upped the difficulty level in order to keep the IQ average artificially around 100 (ibid). Flynn used the Raven test for his studies as the allegedly culture free objective measure of intelligence.

Given the indisputable evidence of large discrepancies within test scores, Lynn back-paddled his enthusiastic support for the Raven matrices, now joining his predecessors in admitting to educational factors in the production of IQ:

These requirements for a culture-fair test are far from being met by the Progressive Matrices. (...) The testee has to decipher the code and then solve the progression problem. These largely arithmetical skills are of course taught in school.
(qtd. in Kamin, 1998, p. 113)

Lynn seemed disappointed in the failure of the Raven tests to measure pure intelligence, rather than recognizing the message of the importance of education it implicated. This again points to a research goal of streaming human being into categories rather than utilizing science in order to facilitate support for struggling students.

In *Horváth and Kiss v. Hungary*, the government attempted to use the Flynn Effect as an argument in their favor. While critics of intelligence tests usually point to the Flynn Effect as proof for the unreliability of IQ scores, the defending party argued that the improved results of the two Roma students were due to the years that passed between the examinations (Farkas& Gergely 2012, p. 21). Both Horváth and Kiss have consistently

scored significantly better in the Raven Color Test than the Budapest-Binet Test.

Horváth's initial assessment in 2001 showed a 19 point discrepancy between the tests (between 83 and 64 respectively), an immense difference for two tests claiming to measure the same innate intelligence (HUDOC 2012, par.17). The next year, the Expert Panel claimed to have re-examined Horváth without signs of improvement; however, the court documents neither specifies the tests used nor the scores obtained (HUDOC, par. 20). Three years later, Horváth's re-examination diagnosed him with an IQ of 61 on the Raven Test (ibid, par. 21), and in 2007, the result jumped back up to a score of 71 (ibid, par. 71).

Kiss scored virtually the same as his peer during his first diagnostic (63 and 83), and just like Horváth, he later received a 71 on the Raven test during a re-examination in 2005 (ibid, par. 26 & 29). That same year, both students improved their scores to an IQ of 83 for Horváth and a 90 IQ for Kiss when tested by independent experts (ibid, par. 32-33).

The large discrepancies between the different administrations of the tests prove their inconsistency and therefore, their inability to reproduce the same result. This alone makes them unreliable as a determined for a clearly defined category such as that of the "mentally disabled". In addition, the fact that the largest divergences took place when the only variable were the test administrators themselves (considering that the last round of tests were within a few months of each other) suggests that unconscious biases in the examiners can make a difference between deeming a student handicapped or healthy. The immense differences between the Budapest-Binet and the Raven test further support the idea that neither test holds up to the standard of the scientific method. The fact that the students scored significantly lower on the Budapest-Binet in comparison with the

nonverbal Raven Test also again backs the well-known criticism of the Binet test as too language heavy, suggesting that poor scores may derive from a non-majority cultural upbringing rather than an innate lack of ability. *Horváth and Kiss v Hungary* showcased these incongruences with the concrete example of the two Roma students.

And yet, the ECHR decided not to rule about the inappropriateness of the mental tests as a diagnostic tool that determines the life trajectory of a child. The court determined that the plaintiffs had not exhausted all domestic options, stating that, “the applicants could have brought an action against the education authorities under this head”, but failed to do so, rendering this part of their application inadmissible (HUDOC, par. 87). This meant that the litigators had to focus their argument on proving that the two Roma students never had been mentally disabled, but were unjustifiably diagnosed as such due to racial discrimination. Without shifting from a systematic approach against the test battery and diagnostic system of Hungary itself to an individual focus on the two specific plaintiffs, there would not have been a court case at the European level.

All in all, both tests applied to the plaintiffs show mental disability as an unstable category. While the intelligence tests despite their problematic history still pose as scientific diagnostic tools for the students, they lose their claim to objectivity due to their ideologically charged origin. Additionally, they forfeit the label of “science” by their inability to create reproducible results.

CAN IT BE I'M NOT MEANT TO PLAY THIS PART?

CITIZENSHIP AND THE COURT CASE HOVÁRTH AND KISS V. HUNGARY

The court case takes place at the intersection of two devalued identities: First, the historically, socially and politically constructed deviant identity of the Hungarian Roma, and second, the scientifically determined category of the mentally disabled.

These two identities in conjunction caused the invalid social position of the two young plaintiffs, which later manifested itself in a concrete, invalidating social location in the form of the remedial school. Through the process of special education schooling, the two identities were further solidified, and the two young men increasingly de-legitimized as citizens. In the next chapter, I will show how the government identified the two litigators as divergent identities through their ethnic origin and mental tests. I will then demonstrate how the authorities acted on the conduct assigned to the specific deviant identities at play by segregating them into special schools. Finally, I discuss how the two litigators resist the category of the mentally disabled by claiming that the educational experts in charge had assigned this identity based on a flawed diagnostic system and the prejudices derived from the Roma's ethnic origin.

THE IDENTIFICATION OF THE DEVIANT THROUGH SCIENTIFIC TECHNOLOGY

Mental testing became a technology to visibilize mental capacities. From a foucauldian standpoint, power derives from knowledge, which in turn comes from seeing and observing (Hughes 2005, p. 81). As Hughes explains the foucauldian relations around power, "Vision (voir), knowledge (savoir), and doing (pouvoir) are the genealogical

coordinates or power, and the ‘gaze’ is one of its essential technologies” (ibid).

Therefore, IQ tests facilitated the observation of intellectual capacities that had previously been internalized.

As intelligence scholars have consistently connected below-average intellect with immorality, mental tests serve to identify other forms of deviancy that intersect with mental deficiency. This ability contributed hugely to their success as a widely and internationally used diagnostic method.

The most prominent intelligence scholars explicitly argued for a strong causation between mental deficiency and criminality. To Goddard for example, a certain intellect constituted the prerequisite of morality, as the latter necessitated an understanding of right and wrong:

Many criminals, most alcoholics and prostitutes, and even the "ne'er do wells" who simply don't fit in, are morons: "We know what feeble-mindedness is, and we have come to suspect all persons who are incapable of adapting themselves to their environment and living up to the conventions of society or acting sensibly, of being feeble-minded".
(Goddard in Gould 2008, p. 90)

By tying appropriate behavior to societal norms, Goddard inadvertently articulates delinquency as a social construct. It is partially the failure to conform to societal expectations, then, that defines criminality. Terman likewise put all individuals falling below the arbitrarily set standard for average intellect under a general suspicion of wrongdoing, asserting that “all feeble-minded persons are at least potential criminals” (Terman in Gould 2008, p. 211). Therefore, Terman encouraged citizens to view persons labeled less intelligent as suspects, rendering them more likely to be treated as such without breaking the law. This produces a confirmation bias in the onlooker that seeks to affirm the already held belief of facing a deviant subject, making persons under such

scrutiny more likely to become suspects or even convicts in case of a crime, or having their behavior criminalized in general.

Yerkes applied this premise of the relation between immorality and unintelligence in his research with the US Army in the wake of WWI (Gould, 2008, p. 227). His examples show how the standpoint produces outcome. Yerkes expected to find prove that mental deficiency lead to deviancy, and therefore, he confirmed criminal behavior where he showed below-average intelligence, and unintelligence among people engaging in, to him, immoral conduct. In one part of his study, he draws connections between the alleged retardation of colored soldiers and their supposed difficulty to conform to rules:

All officers without exception agree that the negro lacks initiative, displays little or no leadership, and cannot accept responsibility. Some point out that these defects are greater in the southern negro. All officers seem further to agree that the negro is a cheerful, willing soldier, naturally subservient. These qualities make for immediate obedience, although not necessarily for good discipline, since petty thieving and venereal disease are commoner than with white troops. (Yerkes in Gould, 2008, p. 227)

The quote shows the definite perception and intersection of race, class, delinquency and promiscuity rooted in a general lack of self-control due to inferior intellect that requires careful management. The wanting intellectual abilities in themselves, to the mind of Yerkes, pointed to an intellectual stratification of the so-called human races. At the same time, Yerkes own observation point to environmental factors, as people of color in the less-progressive Southern United States scored lower than their Northern counterparts. Tackling the issue from both angles, the scholar also interviewed female sex workers in the periphery of army camps. He came to the conclusion that “30 to 60 percent of prostitutes are deficient and are for the most part high-grade morons”, again confirming the dominant view of intelligence scholars that mental deficiency often translates to other

and multiple forms of deviance (ibid, p. 228). Therefore, the technology of intelligence tests that identifies disproportionately more Roma than majority children as mentally retarded reflect the dynamic of US intelligence scholars consistently attaching lower IQ to marginalized groups such as immigrants or people of color as opposed the white majority. Likewise, the historical attachment of Roma identity as entailing lacking discipline both in work ethic and reproduction as well as the stereotype of Roma as beggars and thieves mirror Yerkes' assumptions about black people in the United States. The historically marginalized position attached to social stigmas of immorality, thus, poses Roma as a deviant group that is subject to further investigation. Parallel to the previous use of Roma specific surveys by the state, mental testing opened up methodological ways of identifying the extent and types of divergences incorporated in an already suspicious subject. As mental testing is set up to confirm deviant subjects as such by judging them against normative standards, the IQ result of Roma students often reaffirms their sub-standard location, as was the case with Horváth and Kiss. The outcome of the test for the two students, then, was a reproduction of their marginalized position through their added identity as mentally disabled, as this identity simultaneously supports the perception of the subjects as deviating from the desired norm in a multitude of intersecting identities. As Foucault argues, the identification as falling outside the dominant standard of bodily conformity delegitimizes a person as a citizen (Hughes 2005, p. 83). Therefore, identifying the Roma students as specifically mentally disabled Roma children does not only construct them as different from the mainstream population, but at the same time, arranges them below the latter on a hierarchical scale.

CLASS, RACE AND MADNESS ON THE MARGINS

The creation of deviant identities within the nation state, then, links to the production of power relations. Referring back to the basic assumptions of feminist disability studies, the state's definition of the two plaintiffs as both Roma and mentally handicapped assembles a societal structure that places them towards the bottom of the hierarchy. The perception of the plaintiffs as displaying multiple diverging identities informs their actual position within the nation state.

It is this construction of difference that forms the foundation for attaching meaning to identities. It is at this point that certain identities emerge as specifically problematic. As Hughes argues, hegemonic forces determine deviance by measuring subjects against a specific norm, a dynamic reflected by the standardization of the Binet test to the majority Hungarian population of Budapest (ed. 2005, p. 82). In this system, hegemonic forces define the center, which they utilize to identify the margins. The margins, in turn, reaffirm the center in a dialectical dynamic that through the construction of and attached meaning to difference confirms the norm. Rather than offering an alternative way of being, the peripheries of the nation state have been specifically constructed by the same to strengthen and naturalize the artificially constructed image of normalcy. The naming of Roma students as both ethnically different and mentally disabled, therefore, reinforces the idea of the Hungarian citizen as "white", middle-class, law abiding, and in full possession of "his" mental faculties.

This system, then, normalizes a caste system that presents the ruling of the elite over impoverished, racialized and feminized people as the consequence of innate qualities. Goddard explicitly used his research to justify the upholding of the status quo, stating that

Democracy means that people rule by selecting the wisest, most intelligent and most human to tell them what to do to be happy. Thus Democracy is a method for arriving at a truly benevolent aristocracy.
(Goddard in Gould, 2008, p. 191)

Goddard presents the supremacy of wealthy European men as the logical conclusion different times and places have organically arrived at because it was the most advantageous option for all. By posing the “most intelligent and most human” as the righteous rulers of society, he at the same time creates an image of the feeble and beast-like beings that require their paternalistic management. Because of the dichotomy evoked by this societal structure, naming a person as intelligent automatically associates (specifically) *him* to the upper classes and a full embodiment of humanity, while identifying a person as unintelligent associates them with a lower class status and less-than-human. As Licia Carlson (ed. 2005) writes, “Alongside this quantitative picture, however, we find the depiction of ‘idiots’ as qualitatively different, that is as a separate kind. ‘Idiots’ are viewed as animal-like, subhuman, or of a different race altogether” (p. 139). The procedure of diagnosing a student as mentally disabled by assigning to them an IQ score, therefore, marks a dehumanizing practice.

Other prominent intelligence scholars likewise supported the representation of the allegedly intellectually inferior as sub-human. Terman, for example, also believed that class demarcations were the result of a naturally stratified society based on differing mental capacities (Gould 2008, p. 220). As he found a lack of intelligence in his research of lower class boys, he argued that they be excluded from citizen rights, making his point by comparing his test subjects to foreigners and black Americans (ibid). Terman and his colleagues even in recent research consistently conflated a low IQ score with poverty, race, and immorality. Even as hereditarianism lost its popularity in mainstream

intelligence research, the use of intelligence research to explain and justify social disparity remains a constant factor.

GETTING FAMILIAR WITH FAMILIAL DISABILITY

To reconcile the continuously stratified reality of society with failing genetic arguments, intelligence researchers developed an environment-based concept called familial disability. This explanation of social disparity essentially normalizes the class system as the natural consequence of socially inferior environments producing inferior people (Farkas& Gergely 2012, p. 4). Terman's associate Catherine Cox laid the groundwork for this this concept while working under her mentor in the 1920s (Gould 2008, p. 216). Cox argued that the fact that a person was born into reduced circumstances detrimental to their advancement in society already pointed to them as being innately intellectually inferior, as a person's genes and class status are determined by their parents (ibid). Whether environmental or genetic factors played a greater role became irrelevant, as a child inherited its class standing either way from their parents, through biological or social factors.

The state of Hungary based its concept of familial disability on this notion and integrated it into the diagnostic process during the 1970s in order to justify the segregation of Roma students into special education schools who tested within the average score range (Farkas& Gergely 2012, p. 2). Both the plaintiffs and the Hungarian government argue their case referring back to this concept. Hungarian law defines children with special education needs (SEN) as students who

a) suffer from physical, sensory, mental, speech deficiency or autism, or multiple disabilities in case of the joint occurrence thereof, and struggle with lasting and

serious disorders in the cognitive functions or behavioural development, attributable to organic causes, or
b) struggle with long-term and serious disorders in the cognitive functions or behavioural development, not attributable to organic causes.
(HUDOC, par. 29)

The legal texts, then, include students without pathological issues. Vastly diverse causes and expressions of mental deviations from the norm are amalgamated under the same legal category of the mentally disabled. This generalization invisibilizes the greatly differing educational needs of someone born poor and somebody, for example, struggling with dyslexia. The homogenization of education associated pathologies and non-pathologies under the label “disabled” points to a generic problematization by the state of intellectual difference. By merging a landscape of mental identities into one, it becomes clear that such a diagnostic fails to support the individual student in accordance with her or his specific needs.

To the Hungarian government, the cultural background of the two litigators presents a “socio-culturally retarded environment” (ibid, par. 58). Considering that both students hail from the same Roma settlement, the label of an inferior upbringing gains a racial undertone. Due to their physical location in a Roma settlement deemed developmentally backwards, the government constructed a way of seeing the students as already degenerate. Based on this identity, mental testing could be used to confirm what the gaze of the hegemonic forces had already suspected. Interestingly, the government clearly constructs any culture deviating from the mainstream Hungarian norm as inherently inferior. First, the government argued that norming mental tests in accordance with the majority population reflects the reality of the education system in which all students have to function:

*The Government were of the opinion that tests and standards tailored to the Roma population would have no sensible meaning from the point of view of assessing a child's ability to cope with the mainstream education system – which was the purpose of the assessment of learning abilities of children and of the psychometric tests applied in the process.
(HUDOC, par. 95).*

Here, it becomes evident that the government is aware of how cultural discrepancies produce different learning outcomes. Rather than questioning the mainstream curriculum in its ability to instruct a diverse assortment of students, though, the government asserts the specific culturally bound form of instruction as the standard. The government therefore admits that the mental tests measure the functioning of children within this specific, socially constructed educational environment. Yet, children who fail to measure up to this culturally determined norm receive the general label of “mentally disabled”. This reflects the Foucauldian idea of schools as a site for nation building, since the primary goal targets assimilation rather than maximizing the learning curve for each individual student.

The government further confirms the normalization project behind its educational policies when arguing that IQ scores effectively mirror social status, inadvertently verifying mainstream Hungarian culture as not only normative, but superior:

*What (psychomatic tests) did measure was the effect of cultural deprivation or insufficient cultural stimuli in early childhood on the mental development of children, irrespective of their ethnic origin. Disproportionate representation of Roma children in special education was explained by their disproportionate representation in the group deprived of the beneficial effects of modernisation on the mental development of children. These factors concerned areas of social development which fell outside the scope of the right to education or any of the rights enshrined in the Convention.
(Ibid, par. 96)*

Again, the circular nature of Roma marginalization becomes evident: The marginalized position of the Roma is kept through their existence on the societal peripheries that

excludes them from opportunities of advancement, including education, reproducing their precarious situation. Instead of addressing the intersectionality of race and class at the heart of Roma oppression, the Hungarian government uses the complexity of the issue as a justification for inaction. Presenting the Roma settlement as a “group” whose members find themselves disproportionately “deprived of the beneficial effects of modernisation on the mental development of children” reinforces the constructed dichotomy between the poor, uneducated, unintelligent, backwards Roma and the middle-class, educated, mentally fit and modern majority Hungarians. As the plaintiffs also argue, the Hungarian government equates Roma culture with the inferior, and uses familial disability as a legally sanctioned way of banning Roma students from mainstream education because of their ethnic background. As Farkas and Gergely (2012) elaborate in their response to observations made by the Hungarian government, “the Government takes the socio-economic background of the applicants as warranting and/or legitimising their education in a special school” (p. 4). Due to the concept of familial disability, a lower class background can justify an immediate segregation of students falling under this identity into special education institutions. Class belonging, especially when intersecting with race, then, essentially turns into a factor as deterministic as previous ideas of hereditarianism.

As pure intelligence tests do not exist, the tests measure more how effectively a subject conforms to mainstream expectations. This is reflected by the fact that on average, individuals belonging to the group a test has been standardized for score significantly higher than persons with a divergent group identity. The politics of norming a test in accordance with the culturally dominant part of the population, then, produces a

measurement of social adaption, capable of identifying deviant subjects and the extent of their divergence.

The government knows and problematizes the two Roma subjects through their historical position on the margins of society, the legal text that defines this position as inferior compared to the center, and mental testing as a technology to confirm, justify and reproduce their exclusion from citizen rights such as quality education.

ACTING ON ACTING

The government attempts to guide the actions of the pupils, namely their intended enrollment into school, to a behavior more supportive of the power structures overall goal, namely, the maintenance of the status quo. In line with Biopolitics, the Hungarian state does not simply prohibit Roma students from getting an education, but instead diverges them onto an alternative path of schooling, manipulating action rather than bringing it to a halt. Therefore, segregated schools serve to further divide and isolate the Roma population.

The type of identity and action the Hungarian government chooses to act upon reveals much of the Biopolitics that drive this dynamic. As feminist scholar Shildrick (ed. 2005) reiterates, “the ever more detailed sub-division of the bodily behavior into a set of discontinuous functions speaks to a fetishistic fragmentation of the embodied person” (qtd. in Hughes, p. 53). Intelligence, or lack thereof, becomes the defining factor of a student scoring below average on mental tests in Hungary. It is this diagnostic that becomes his or her identity, deciding their entire life trajectory. On the other hand, an above-average IQ score hardly affects the choices of a student in a structural way. This

shows how difference usually only becomes pathologized when associated with the negative. In this case, difference only provokes state intervention when said deviation distinguishes itself as inferior to the norm. Through this dynamic, difference in itself becomes equated with the inferior.

Once students have been classified as an inferior identity, the identity of the mentally disabled becomes a problem to be solved via state action. Subsequently, the Hungarian state defined special schools as the appropriate space for the pathology of “mentally challenged” children. The first attempt to create an educational setting specifically for those deemed “feeble-minded” preceded the wake of intelligence tests: Massachusetts School for Idiotic and Feeble-minded Youth was founded as a social experiment in 1848 in the US, and rapidly spread to several other states (Carlson, ed. 2005, p. 140). As Licia Carlson points out in the context of the historical emergence of such institutions, special education schools formed an integral part of the normalizing project (ibid, p. 145). As mental testing increasingly facilitated the visibilization of undesirables among citizens, segregated schools served to invisibilize them once again. In this sense, the governing body does not only act upon deviant behavior, but simultaneously works on the gaze of the normative populace by directing it unto other normative subjects. This once again reinforces a conformist image of the nation as a whole.

In addition, special education institutions present a more effective tool for nation building because, as opposed to insane asylums, schools do not only passively support a mainstream image of society through the limiting of certain identities to specific spaces, but also actively produce identities conducive to the hegemonic project. Different schools, then, produce different identities, but all such institutions still form what

Foucault called a “disciplinary setting”, constructed by the governing body for the purpose of civilizing the population and assembling society. In an inherently stratified society, such schools can function to produce the different identities that fit into society’s class system.

Special education schools can therefore serve to reproduce an underclass derived from various devious identities. As Carlson describes the education of schools for the feeble-minded in the US, the instruction was tailored to render inhabitants capable of producing labor for the state (ed. 2005, p. 142). To achieve this goal, schools focused on “rigorous training and supervision”, preparing students to take up “industrial occupations and manual labor” (ibid). The Hungarian reality mirrors this focus on training rather than education that turns students into low-skill laborers whose limited abilities justify a close management, as opposed to critically thinking citizens. Most students (47.4 percent) who attended a special education primary institution continued their segregated schooling experience by transferring to a special vocational school. About a third undergo short-term vocational training, and only 4 percent move on to a mainstream vocational school or high school (White 2012, p. 55, table 9). Almost 17 percent of all special primary school students drop out after receiving an elementary education (ibid). This puts special education students at a significant disadvantage for advancing scholastically when compared to Roma in mainstream education venues, a difference that is exacerbated in comparison to mainstream non-Roma students, of which most (40 percent) finish with secondary vocational training, and almost a quarter graduate from a four year high school (ibid). As schooling in Hungary directly translates to specific jobs one is qualified to perform, education permanently determines a person’s professional trajectory. Therefore,

the segregation of students into schools that prepare them for low-skill labor permanently restricts a person to such a work life. Especially with already marginalized students like the Roma, such a procedure helps produce and maintain an economic underclass that places the blame of their precarious situation on the people's own failure to obtain an adequate education.

In the case of school segregation in Hungary, this economic underclass derived from special education students is permanently infantilized. The technology of mental testing assigns the mental age of a minor to subjects scoring within the demarcations of mental retardation. Subsequently, remedial schools limit the educational options of those students, preventing them from obtaining the skills and knowledge expected from an adult. Therefore, IQ tests in conjunction with school segregation are set up to keep remedial students in a child-like state. This once again shows how the political structure creates a new identity in order to subsequently assign the need for paternalistic management unto the same. As the state treats mental disability in connection with mental age as a fixed category, persons under this label can never fully achieve adulthood, and thus, can never obtain full citizenship that is in turn defined in part by reaching maturity. This identity, then, justifies the paternalistic management and control by the political structure. The perception of the state authorities determines the reality of students, and it is this gaze that officially categorizes and segregates them.

Such an underclass may serve as an “other” to affirm the norm, perform tedious tasks majority citizens stigmatize, or free up the labor market for desirable identities. While the specific uses of deviant identities by the state differed historically, the political efficacy

of an internal “other” existing at the fringes of society remains consistent within the Hungarian territory.

Consequently, in order to emancipate themselves, Horváth and Kiss needed to not only reject the label of the mentally disabled, but find a way to officially have it revoked by an authority equal or superior in the hierarchy to the Hungarian government.

In sum, the metaphorical marginalization of Roma takes a physical form through segregation of settlements and schools, both of which function to reproduce each other’s isolating effects. The invalid social position of so-called mentally disabled students becomes a concrete corporal location by constraining the formal education of bodies under that category into segregated special education schools. This location apart from the norm re-affirms their divergent status and thus, further delegitimizes them as a subject within the nation.

Segregated schools enforce the view of bodies sorted into such institutions as deficient in at least two ways: First, it facilitates seeing students in a space reserved for the mentally disabled, and therefore, aids their identification as such, contributing the circular nature of affirming this social position. Secondly, within the space of special schools, students receive a special education, which by definition prepares them for a life apart from normative citizenship.

This shows that remedial schools pull students into a circular dynamic that reproduces and reinforces their deviant status in a systematic fashion by restricting the channels through which a child needs to choose and achieve a norm-conform identity.

Their categorization as mentally disabled, therefore, formed an obstacle to the achievement of full citizenship for Horváth and Kiss. In order to overcome this obstacle, the litigators had to contest their assigned identity through normative channels.

NEGOTIATION

The suing party held that first, Horváth and Kiss had been wrongfully diagnosed as mentally disabled due to a flawed test battery that discriminated against people of Roma origin, and second, their subsequent segregation into a remedial school provided them with a substandard education (HUDOC, par. 3).

For Kiss, his formal training had as a consequence that he could not pursue his wish to become a car mechanic (HUDOC par. 28). Similarly, Horváth was unable to undergo training to become a dance teacher as he intended (*ibid*, par. 8).

The government of Hungary denied these accusations, claiming that student from special schools may transfer to advance their education in mainstream secondary schools (Farkas & Gergely, 2012, p. 5). The before mentioned statistics, however, show that to be more of a hypothetical than attainable scenario.

In addition, the national law defines special education as using “a special curriculum” and learning resources, omitting certain subjects entirely while not teaching others at the same standard as a mainstream school (HUDOC, par. 68). Therefore, the suing party maintains that, primarily, the two Roma boys have been falsely diagnosed as mentally disabled due to an inadequate diagnostic system, and as a consequence, received a substandard education that violated their lawful right to educational equality, resulting in the unfulfillment of their professional aspirations. Both the right to quality education and

the freedom from ethnic discrimination are guaranteed by the Hungarian constitution for all citizens (ibid).

Fiona Kumari Campbell (ed. 2005) argues that holding governments accountable to enforce existing laws forms an integral part of modern activism:

Activists with disabilities have placed great trust in the legal system to deliver freedoms in the form of equality rights and protections against discrimination. While these equalization initiatives have provided remedies in the lives of some individuals with disabilities, their subtext of disability as negative ontology has remained substantially unchallenged.
(p. 108- 109)

The court case, then, presents a strategy for the Roma students to engage with and contest the identity of the mentally disabled hegemonic forces have defined them with. However, this strategy by definition requires the plaintiffs to argue on the terms of these same hegemonic forces.

As Foucault argues, oppressed elements often try to use the system set up against them to argue for their rights:

Moreover, against this power that was still new in the 19th century, the forces that resisted relied for support on the very thing it invested, that is, on life and man as a living being... life as a political object was in a sense taken at face value and turned back against the system that was bent on controlling it.
(Foucault in Espinosa 2004, 38)

The strategy of the plaintiffs, then, forms an integral part of the dynamic within biopolitics. Using legal channels to voice their grievances and demand justice established the young Hungarian Roma men as political beings with citizen rights. Therefore, by assuming this role, the plaintiffs have already responded to their assigned identities as mentally disabled by showing themselves as taken up a project reserved for able citizens. At the very least, the government of Hungary had to recognize the action of the students and acknowledge them in their self-determined identity as litigators.

Arguing on the terms of the state, the accusers used the construction of the mentally disabled as lesser to support their argument that the plaintiffs have received an inferior education. Instead of arguing for the inclusions of marginalized identities into the normative sphere, they contest that they have ever truly embodied such an identity. As Kumari Campbell writes, “(...) disability is assumed to be ontologically intolerable, that is, inherently negative” (ed. 2005, p. 109). The plaintiffs affirm this negative view on unintelligence by categorically rejecting such a label. The strategy of this resistance incorporates the use of intelligence tests, only this time for their own political gain. Therefore, the litigators clearly work using hegemonic channels, both in the way they choose to resist an imposed identity by prompting a court procedure and by the kind of arguments selected to confront said identity. Using dominant channels and discourses to state one’s cause simultaneously reinforces both, as both the plaintiffs and the government have to recognize their legitimacy at least in part in order to communicate through them. The litigators, therefore, confirm remedial schools as the appropriate space for the inferior identity of the mentally disabled, while rejecting such a label for themselves. By performing as able citizens through the use of the legal system, Hovárth and Kiss present themselves in an identity that contradicts their categorization as mentally disabled. Supporting the view of mental retardation as incompatible with the citizen project they embody during the court case, then, helps to distance the litigators from the identity of the mentally disabled. Hence, the plaintiffs use the dichotomized structure of the Hungarian state to strengthen their argument.

The extent to which such a strategy can challenge the existing system while utilizing it is therefore limited. In the court case, the biopolitics behind the government’s actions

remains largely invisible. As a consequence, scoring below average on intelligence tests remains a pathology that directly translates into impairment not because of bodily limitations in themselves, but because such an identity bans people from even pursuing virtually any professional ambition. In this sense, the Hungarian reality shows much of the aspirations of eugenicists that sought to prevent lower class citizens from accessing high-paid positions. Kumary Campbell describes citizenship partly as a “performance of a choosing, desiring, and consuming subject” (ed. 2005, p. 111). In a liberal democracy, citizens define themselves by their actions. By segregating the plaintiffs into a special school, the state denied them three basic expressions of citizenship: the choice of the type of education they want to receive, the choice of pursuing the career they desired, and, in consequence, the participation as a consumer in a consumer-based society due to their inability to access gainful employment. The procession of their exclusion also affects their private life, as insecure economic circumstances prevent them from effectively providing for a family. This factor gains even more importance when considering the large number of Roma households almost exclusively relying on a man’s income. As reproduction laid at the foundation of degeneration anxiety, the systemic exclusion from disproportionately many Roma from gainful employment through their systematic segregation into remedial schools could serve to discourage family planning through economic restraints.

While the causal link between intelligence and mental tests is weak, no evidence exists that suggests low scores on an IQ test inherently prove an inability to attempt a career as a dance teacher or car mechanic. Therefore, the government set up a system in which it can deny fundamental citizen rights to its subjects through gradual marginalization,

facilitated by the science of intelligence tests: First, the already marginalized position of Roma marks their children as suspects of deviance. Via the technology of mental testing, this suspicion is scientifically backed. Now an “objectively” determined problematic identity, the recently categorized mentally disabled Roma students take up an isolated space within their already fringe-position in society. This restricts the students to trajectory that exclusively prepares them for low-skill manual labor. Thus, the state does not outright deny Roma access to mainstream careers, but systematically prevents disproportionately many Roma from being able to make the choices that would lead to a more high-end career by diagnosing them as mentally disabled via IQ tests, triggering a series of politically determined consequences that prevents such pathologies from obtaining full citizenship.

The fact that this system targets young children minimizes the actual student’s ability to respond the government’s actions at the time they take place. This facilitates the patronizing control by the government over its infantilized subject. The intersection of the devalued identities of Roma, children, and mentally disabled constructs a subject that is stigmatized as incapable of providing for himself, exacerbating his supposed need of close management by state sanctioned authorities. As Rose (2006) points out, this idea of the state as responsible for its citizens reflects the biopolitics mindset of “pastoral eugenics”, viewing the state as the good, patronizing “shepherd”, assuming the right to oversee the population for its own good (61). In the case of *Horváth and Kiss v. Hungary*, the Hungarian state had autonomously decided over the life trajectory of two children, essentially taking up the parental role. This idea gains support when considering that the actual parents of the Roma boys were excluded from both the mental examination and the

decision what type of education was appropriate for their children, despite the fact that the law in Hungary guarantees legal guardians a significant say in the process: According to “The Follow-up Report on Hungary (2002-2005) of the Council of Europe Commissioner for Human Rights” from 2006, custody holders have to agree to stream their child into a remedial educational setting before such measures can be taken (HUDOC, par. 31). This “protection mechanism” (ibid), however, has been ignored by the educational authorities responsible for Kiss and Horváth.

This shows again an exclusion of Roma bodies from citizen rights. In this case, it denied the parents of the plaintiffs their lawful right to decide over the educational careers of their children. The opinion of the parents that their children did not display any mental deficiency that would justify their segregation into special schools stood at odds with the authority’s decision to place both students into an remedial education institution. By going over the heads of the parents, the state representatives de facto invisibilized them in their identity as citizens and in their authority as parents. The state, thus, presented itself as the ultimate parental figure that ruled over the lives of infantilized subjects in a way that served the normalizing project of the state, to the detriment of the individual students.

This dynamic changed when both the plaintiffs and the Hungarian government had to argue their case outside of the national realm in front of the extra-national justice system of the European Union. The change in outcome, then, is also a product of the change of power relations. The European Union follows a different goal of community building than Hungary. At the European level, courts are unlikely to gain politically from the marginalized position of Roma. Even if serving the greater nation building project, such a

project would most likely find itself at odds with the European project as a whole. In addition, neither ECHR nor the EU depend politically or economically on Hungary. On the flipside, Hungary does receive funds from the EU, all of which are tied to their membership. Greenberg (2010) points out that “in 2000, as a condition of admission to the European Union, Eastern European nations pledged to eliminate racial discrimination, including widespread segregation of Roma (Gypsy) school children” (p. 921). Therefore, Hungary does not hold such a position of power in the setting of *Horváth and Kiss v. Hungary* in Strasbourg as to merely reject all accusations. Put on the defensive, the state needs to explain itself, denying it the strategy of hiding behind passiveness.

The identity as “mentally disabled” denies students full citizenship. The label has prevented them from performances of choosing, desiring, and consuming by not allowing them to pick the profession they wanted, at the same time inhibiting future desires and choices by greatly limiting their ability to function as a consumer in the capitalist system in which action is primarily defined by consumption.

By taking up a legal personality as plaintiffs, they do not only present themselves with a new identity, but try to change their state assigned identity through the power of their remaining citizenship within the system.

While working within hegemonic channels as a strategy for resistance limits the scope of undermining an oppressive system as a whole, even smaller steps in dismantling the flawed test battery can support the overall project of more radical change. In the Case of *Horváth & Kiss v. Hungary*, achieving the change of identity of two Roma students from mentally disabled to mentally healthy through the explicit use of the national diagnostic system proves the artificiality and fragility of identity categories, even when determined

by so-called scientific means. The two litigators, then, now embody the destabilization of the category of the mentally disabled in the Hungarian context.

WE'RE ALL MAD HERE: CONCLUSION

The court case *Hovárth and Kiss v. Hungary* shows the biopolitics of systematically diagnosing Roma students as mentally disabled to subsequently segregate them into remedial schools as a strategy of the state's normalizing project.

Biopolitics consistently played a role in creating and upholding the marginalized position of Roma within Hungary. Since the time of their arrival, the political elite observed the Roma as distinctly different from the majority population. First, hegemonic forces perceived Roma as different due to their more recent arrival and, at times, visibly darker skin color. Already marked as distinct by the dominant gaze, technologies such as censuses served to identify specific deviant behaviors. The state then acted on behavior they viewed as generally problematic for the power structure or specifically problematic for one specific identity. As a consequence, the Hungarian monarchy passed decrees that forbade Roma to play music, move around, wear traditional clothing, speak their native languages, or marry amongst themselves. This shows one example of policy supporting the homogenization process of the state, as such conducts were only problematic when displayed by certain identities in culturally bound ways.

Education became increasingly more important for the nation building project. The schooling process facilitated the production of identities as defined by the state through national curricula. In the realm of education, segregated schools for mentally disabled children enabled the restriction of deviant identities to a space apart from the norm. The remedial schools fulfill two basic functions in relation to the normalization efforts: One, they remove divergent identities from mainstream schools, invisibilizing their existence and maximizing the homogenization of the mainstream classroom in order to most

effectively produce normative citizens. And two, special education schools channel deviant identities unto an educational path that constructs such students as the economic underclass of the nation by providing a substandard education which only prepares children to perform low-skill manual labor in an economic setting that increasingly demands a specialized and highly trained workforce.

Mental tests became the most important technology to visibilize the divergent identities that were to be assigned to special education settings. As Gould (2008), argues, intelligence tests became a technology of limits. The single score intelligence tests used in the case *Horváth and Kiss v. Hungary* came from a history of scientific racism and classism. Its designers advocated the Binet test as a tool for social control capable of assigning every citizen their proper place within the nation state. As intelligence scholars drew strong connections between a lack of mental capacities and immorality, the containment of so-called morons in institutions became a favored strategy of preventing divergent identities from exerting a negative effect on the general populace.

Intelligence research, however failed to apply the scientific method and never showed reproducible results. The demarcations between the categories of the feeble-minded and normal intelligence dependent on researcher, societal and historical context, and thus varied greatly throughout the decades. Mental disability, therefore, is an unstable identity category.

Mental testing in conjunction with special education schooling consequently helped stratify the population in a class system along ethnic lines.

In the case *Horváth and Kiss v. Hungary*, a culturally normed test battery identified the two plaintiffs as mentally disabled. The state then assigned a remedial school as the

appropriate space to educate the two plaintiffs. During their time at the remedial school, both boys received training that limited their career choices to low-skilled manual labor. This process reaffirmed Horváth's and Kiss' already marginalized position. The perception of the state that Roma incorporate a divergent identity facilitated the boy's diagnosis as mentally disabled, which set in motion a process that is capable of attaching more deviant identities to the intersectional marginalization, such as the label as unintelligent, uneducated, unemployed, and poor. The gaze of the hegemonic force, than, structured the reality of the litigators, which streamed them unto a path set up to reproduce stigmatized ideas associated with the identity of the mentally disabled (or Roma) in a circular fashion. In addition, the belonging to the category of the mentally disabled permanently fixed the two Roma to an infantilized position within the societal hierarchy, which justifies and facilitates their close management by the authorities. By taking up the identity of the litigators, Horváth and Kiss present themselves as capable citizens in contrast to their state-assigned identity as mentally disabled. Doing so forces the government to recognize the former students in an emancipated position. While the court case could not address systematic changes in the test battery, the plaintiffs effectively showed mental disability as an unstable, flexible, and culturally determined identity category by scoring vastly differing results on tests that supposedly measure a fixed, innate intellect. As their education at the remedial school used a reduced curriculum that prevented both students to even pursuit their modest career aspirations, the plaintiffs convincingly argued that special education in Hungary provides an inferior form of schooling in comparison to mainstream institutions. By juxtaposing the right to equal education with the provingly

substandard and racialized special education landscape, the court case may have laid the groundwork for future proceedings to integrate schooling in Hungary in order to comply with the law that guarantees access to quality education for all students.

All in all, the court case *Horváth and Kiss v. Hungary* showed the stratification of the general population through the technology of mental testing into segregated schools for the purpose of reproducing a class system that places already marginalized ethnic minorities at the bottom of the hierarchy while simultaneously affirming the privileged position of normative citizens.

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