THE UNIVERSITY OF CHICAGO

ON SELF GOVERNMENT: DEMOCRATIC POLITICS AND LAW IN PRISONS,

ASYLUMS, AND BOARDING SCHOOLS

A DISSERTATION SUBMITTED TO

THE FACULTY OF THE DIVISION OF THE SOCIAL SCIENCES

IN CANDIDACY FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

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CHICAGO, ILLINOIS

DECEMBER 2016

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CHAPTER 1

IN THE SHADOW OF SELF GOVERNMENT

The ideal of the 'self-governing citizen' – both what it brings into relief and what it casts in shadow – shapes our vision of democratic life, generally without our awareness. What's brought into relief by this ideal is a prescriptive project, a vision of political freedom rooted in the intuition that an individual or collectivity that is not self-governing is in some way subjugated, subordinated, or shackled by another.

What's cast in shadow, to borrow from Robert Dahl, is a series of "half-hidden premises, unexplored assumptions, and unacknowledged antecedents" that form a "vaguely perceived shadow theory that forever dogs the footsteps of explicit, public theories of democracy."[1] This dissertation is about that shadow theory. About how childhood, madness, and criminality complicate claims about the nature of subjectivity and human capabilities in theories of democracy. And about how custody and democracy can inform, deform, and transform one another.

In this brief introductory chapter I will motivate the core research questions of the dissertation, describe my approach, and survey the chapters that follow.

A Democratic Horizon

Custody and democracy are reverse images of each other. One is the rabbit, the other is the duck.[2] Strongly held intuitions impact our expectations, and direct our attention, to one

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1. Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), 3.

2. This is a reference to the rabbit-duck illusion popularized by Wittgenstein. (Or, if you prefer other examples, the young girl-old woman illusion or the Rubin vase.) A reversible image, or an ambiguous image,

figure or the other at any given moment. In the end, however, there is just one sketch in front of us. To make sense of the whole one needs to trace the pencil marks that the figures share: in this instance, it's the concept of self-government.

To start, let's sort out a few terms. When one refers to an organization as self-governing, what is usually meant is that it has "the property of having, knowing, and consciously pursuing its own 'will.'"[3] While they share an "elective affinity," self-government and democracy[4] do not require one other. Colin Bird offers clarity:

> Hobbes's political theory illustrates the first point [that self-government doesn't require democracy]: Citizens can will their collective security and self-preservation by authorizing highly undemocratic forms of government; even a monarchical Leviathan instantiates Hobbesian self-government. The second point [that democracy doesn't require self-government] is illustrated by those empirical theories of democracy inspired by the work of Joseph Schumpeter (1942) and his antecedents (Michels 1916). These modern theorists of democracy regarded the notion of self-government as obsolete and prescientific, in part because in their view it tends to obscure the systematically oligarchical reality of political organizations.[5]

While not intrinsically related, the two concepts are typically combined in practice – as *democratic self-government*. The result is an abstract form of political organization that demands quite a bit from its members.

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is an optical illusion that exploits graphical similarities between two or more distinct image forms.

3. Colin Bird, "The Possibility of Self-Government," *American Political Science Review* 94, no. 03 (2000): 563.

4. I mean democracy here in the most capacious sense, characterized by the right of members to have a say in the process by which leaders are selected.

5. Bird, "The Possibility of Self-Government," 564ff.

A mutually respectful desire to live in peace with those for which one harbors deep moral disagreements should not be taken for granted. Nor should the desire and ability to make complex decisions for the benefit of the community. These are political achievements and not assumptions to be taken on faith.[6] To this end, democratic states task themselves with creating citizens *capable* of collective self-government.[7] The self-governing democratic state is the reflection of a popular will that, in turn, is the target of a state-led project of 'will making.'

The nature of this will-making varies according to what species in the genus of democratic theory to which one is referring. Classical liberals, for example, tend to assume the sufficiency of 'thin' forms of participation (centrally, electing representatives), while civic republicans typically demand more of the citizenry. In either case, will-making takes the general form of civic education; more formally through schools,[8] but also informally through other interactions with the state, such as serving on a jury, contact with police, or accessing public services.[9] Among many would-be democratic reformers there is a shared understanding that individuals learn – and unlearn – civic skills and values by habituation and by practice. In particular, they point to the significance of participation in everyday organizations.[10]

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6. Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (Cambridge: Harvard University Press, 2003), 20; Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970).

7. What I refer to as self *governance*; the various means, by struggle or by strategy of rule, that individuals or collectivities are implicated in their own management.

8. See Amy Gutmann, *Democratic Education* (Princeton, N.J.: Princeton University Press, 1999).

9. I have in mind the work of Joe Soss in particular. See Joe Soss, *Unwanted Claims: The Politics of Participation in the US Welfare System* (University of Michigan Press, 2002). On policing, see Tom R. Tyler, *Why People Obey the Law* (Princeton, N.J.: Princeton University Press, 2006) and Benjamin Justice and Tracey Meares, "How the Criminal Justice System Educates Citizens," *The Annals of the American Academy of Political and Social Science* 651, no. 1 (January 2014): 44–73. The example of juries is from de Tocqueville.

10. For example, see Henry Brady, Sidney Verba, and Kay Schlozman, "Beyond SES: A Resource Model

To be clear, the implication is not that all environments, regardless of population or purpose, should be participatory. Just as too much or too little 'voice' (or exit, or loyalty, or neglect)[11] can undermine the stability of an organization, environments that are too participatory can, at times, thwart the collectively held objectives of group members. This is also not to say that there is some universal optimal level or arrangement of participation, or that a particular, successful institutional mix at one moment will endure over time.

While there is no one optimal institutional design, the entire normative project of deepening and extending democratic commitments through participation rests on the *possibility* of self-government. That there are mechanisms, platforms, devices, ready-to-hand to inform the public, solicit preferences, and produce rational, reasonable decisions.[12] Part of the excitement over participatory politics and neighborhood-level participatory budgeting, for instance, is that they potentially offer new techniques for collective self-government. As I see it, the general vision of civic education and engagement just sketched forms a kind of horizon for democratic theory, an aspirational vision of participation that defines the possibilities for democratic politics in our moment.[13]

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of Political Participation," *American Political Science Review* 89, no. 2 (1995): 271–94 and Kay Schlozman, Sidney Verba, and Henry Brady, *The Unheavenly Chorus: Unequal Political Voice and the Broken Promise of American Democracy* (Princeton, N.J.: Princeton University Press, 2012).

11. See generally Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations and States* (Cambridge: Harvard University Press, 1970); C.E. Rusbult, I.M. Zembrodt, and L.K. Gunn, "Exit, Voice, Loyalty, and Neglect: Responses to Dissatisfaction in Romantic Involvements," *Journal of Personality and Social Psychology* 43, no. 6 (1982): 1230.

12. Projects like Archon Fung's "participedia" and Cathy Cohen's exploration of new media use by young activists of color are both in this spirit. For the former, see Archon Fung and Mark E Warren, "The Participedia Project: An Introduction," *International Public Management Journal* 14, no. 3 (2011): 341–62. For the latter, see Cathy Cohen, *Democracy Remixed* (Oxford; New York: Oxford University Press, 2011).

13. While the term 'horizon' is borrowed from Jodi Dean, her work rejects the concept of a democratic horizon in favor of a communist one. Jodi Dean, *The Communist Horizon* (London; New York: Verso Books, 2012), 1-2.

Custody

This prescriptive project, however, has another face. The situation of prisoners and mental patients are usually taken to be paradigmatic cases of formal exclusion, even civil death, and the lives of young children are a reminder that we are born into radical dependency, not freedom. As I describe in the next chapter, these exclusions are typically understood to be consistent with democratic government. In almost all states in the U.S., for example, "no person who has been legally convicted, in this or another State or in any federal court, of any crime, and is serving a sentence of confinement in any penal institution [. . .] shall vote, offer to vote, attempt to vote or be permitted to vote at any election until his release from confinement."[14] Likewise, one is "not a qualified elector if mentally incompetent as determined by a court of competent jurisdiction."[15] And, of course, the Twenty-Sixth Amendment to the Constitution sets the federal voting age at 18 years old.

Divested of the capacity to formally participate in mainstream community life, individuals become specters or 'animate corpses' in the eyes of the law. While these individuals are excluded, they are not abandoned.[16] At least since the appearance of houses of correction in the eighteenth century,[17] a mainstay of democratic exclusion in the United States is the use of bureaucratic organizations to govern, through guardianship, these populations. Mixing

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14. Illinois Compiled Statutes, 10 §5/3-5.

15. District of Columbia Code, §1-1001.02.

16. Robert Gooding-Williams offers the useful distinction between "extrinsic" and "intrinsic" exclusions. Extrinsic theories present exclusion and domination as a sequence of minor deviations from the core ideals that have shaped and continue to shape the fabric of American life. In contrast, intrinsic accounts maintain that exclusion and domination are a central and defining feature of that fabric. The narrative provided here offers an intrinsic account of democratic exclusion. See Robert Gooding-Williams, *In the Shadow of Du Bois: Afro-Modern Political Thought in America* (Cambridge: Harvard University Press, 2009), 15f.

17. David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New York: Aldine Transaction, 2002 [1971]).

the sciences of the time, religious traditions, the needs of the division of labor, and various political philosophies, the utopian reformers that built the modern penitentiary, asylum, and house of refuge believed that some, but not all, social misfits had the "capacity" to be made into subjects capable of self-government.[18]

By using the term "custodial organization" I mean to suggest institutions such as the mental hospital and the prison can be classed together based on a series of structural similarities.[19] Most simply, prisons, asylums, and boarding schools are formal organizations; they are defined by patterned, coordinated human decision-making aimed at achieving a series of ends. These ends might include therapy and rehabilitation, but they might also include objectives as basic as containment and incapacitation. For another, while organizations tasked with managing these populations vary in purpose (care, protection, education), each organization operates as *parens patriae*. Custodial organizations assume an authority analogous to that of a parent over her child. They assume custody, in the sense of public trusteeship. Finally, and most importantly, the authorization for that trusteeship is rooted in the assumption that some individuals are insufficiently self-governing – that they are incapable of full participation in economic, social, or political life.[20] Custodial populations are

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18. For an elect group, civil death was simply the precondition of resurrection into a new political life. Just as white prisoners were distinguished from African Americans by their 'capacity' for reflection, convicts were distinguished from slaves by their legal potential for a restoration to citizenship. Indeed, civil death and the alienation of solitude where the very foundations of that rebirth. Caleb Smith, *The Prison and the American Imagination*, Yale Studies in English (New Haven: Yale University Press, 2009), 110.

19. Here I'm following in a venerable tradition of social theorists: Erving Goffman, David Rothman, and Michel Foucault. On "total institutions," see Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (New York: Random House, 1961).

20. Incapacities are usefully subdivided by their relevance to participation, and by their permanence. First, some abilities or disabilities are understood to be largely irrelevant to the capacity to participate, while others are thought to be central. Second, for some groups incapacity is thought to be temporary or curable; for others, incapacity is thought to be a permanent disability. Consider the difference between a young child at an elite boarding school and a patient with severe Alzheimer's living out his dotage in a nursing home.

understood to lack sociality, lack rationality, or lack maturity – all of which are conceptually necessary to decide, deliberate, or participate in the polity.

Research Question

The history of custodial organizations, for some, is a story of increasing knowledge and increasing humanity, a story about reflecting on the faults of our predecessors so as to improve the lot of future generations. In this vein, researchers interested in the history of custodial organizations center their focus on issues related to the proper care of the confined or the potential to cure: What can we learn about the proper conditions of care? Can treatments be improved; and if so, by what means? While important, I argue these questions paper over a more foundational political question, the question of how an individual or group comes to be understood as capable of participation in the first place.

A careful glance at the fortune of particular custodial communities suggests an interesting puzzle. Consider three vignettes from my research:

- In 1973 the guards at Walpole prison in Massachusetts went on strike. Walking away from their posts, guards assumed the inmates would turn to violence in the absence of supervision. Instead, the inmates organized a union, the NPRA, and administered the entire prison – without significant incident – for three months. Inmates elected and organized a council, ran educational programs, and operated the foundry; they even adjudicated issues between inmates and administered punishments.

- Between 1947 and 1965 the rise of therapeutic community approaches to mental health treatment produced an unintended byproduct at Saint Elizabeths Hospital: patient

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self-government. Over a few short years patients in a maximum security ward for the criminally insane became organized; they came to collectively deliberate and advocate for policy changes at the hospital.

- Far from being omnipotent rulers who have crushed all signs of rebellion, the staff of Winterhill boarding school are engaged in a continuous struggle to maintain the ideological order – and it is a struggle in which they frequently fail. Children resist the definition of their situation and, in more dramatic instances, attempt to supplant "liberal paternal" rule through appeals to different normative orders.

Against various professional and public claims about wards' incapacity, the historical record is replete with both exceptional and pedestrian examples of participation in communities of convicts, children, and the cognitively disabled. These episodes are relatively easy to narrate, but much more difficult to understand. Our analytical spade quickly hits bedrock. What's significant is not whether a particular movement was a success or a failure, but in explaining how events so improbable became possible. What are we to make of calls for recognition, for inclusion, among these populations? Where do wards and custodians fit into the democratic political order?

Motivating the study below is a suspicion that there is a fundamental incoherence underlying our understanding of democratic participation – a vision of voice and inclusion that we will not give up partly because it is essential to the way in which we make sense of our world. That vision, I suggest, is of a political world that is partitioned. An area for self-governing citizens and an area for custody; 'civil society' and a domain where paternalism is necessary, appropriate, and effective. Wrapped in what I call the 'exclusion thesis' (Chapter 2) is the

simple but significant distortion that the boundaries of competence can be determined prior to political contest.

I demonstrate that this assumption neither stands to reason, nor produces a normatively appealing model of democratic politics. Reformers take the political system as given, accept its self-description, and develop policy and philosophy with an eye towards helping society achieve what it claims to value given those facts of the matter. The result is a distinctly slow, corrosive kind of civic violence; the design of institutions like prisons is insulated from democratic critique.

My alternative is simple, suggestive, and controversial. Participation is not some primeval animating force for democratic community, but a site-specific accomplishment enchained and entwined in a wider set of organizational processes. Particular organizational forms mediate the relationship between the ideal of self-government and competence – and civic competence is by institutional contexts that are, in turn, revisable. The final pages of this dissertation forward the claim that we ought to think more broadly about what I refer to as *responsive* custodial relationships.

My case studies of non-violent collective action by prisoners (inmates' union at Walpole prison, Chapter 3), patients (patients' federation at St. Elizabeths Hospital, Chapter 4), and children (student resistance at Winterhill boarding school, Chapter 5) ultimately underscore a disparity between the complexity of existing empirical examinations of custody and the simplicity of our normative reasoning about punishment, care, and education.

Approach and Methods

Existing social scientific accounts of the relationship between knowledge, organizations, and punishment are usually cast in one or more of the following five general social theoretic approaches: the normative, the functional, the structural, the post-structural, and the cultural.[21] Each approach is largely defined by the type of questions it asks about the political world and not by a given methodology. These approaches overlap and most scholarship incorporates dimensions of multiple approaches. That caveat aside, it's analytically useful to pencil ideal types and then outline my own theoretical orientation.

The normative approach is characterized by the study of rights and obligations. The questions that animate this approach look like the following: "by what right do we put populations under custody?" and "What are the moral burdens of custody?" The normative approach asks about the moral dimensions of care, for example, or the proper justifications for punishment. The bulk of liberal legal theorizing on punishment is in this vein. H. L. A. Hart, John Rawls, Joseph Raz, and Martha Nussbaum are exemplars of this approach.

Functional accounts ask what a phenomena does relative to a given end – "what is the social function of participation and confinement?" The functionalist account calls our attention to feedback loops and to the connections between institutions, but risks committing a basic logical fallacy – confusing 'function' with purpose, origin, or causality.[22] This approach

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21. These divisions, and my approach generally, are inspired by Bernard Harcourt. Harcourt describes four principal traditions in the social sciences: the phenomenological, the structuralist, the practice theoretic, and the performative. For him, there is no simple way to choose among them: "The four approaches all rest on different assumptions about human agency and, as a result, are non-falsifiable." As a consequence, we take a leap of faith. We make a kind of ethical choice to get our hands dirty, and we ultimately must pay the price for our decision. "No choice is morally costless." See Bernard E. Harcourt, *Language of the Gun: Youth, Crime, and Public Policy* (Chicago: University of Chicago Press, 2006), 168-174.

22. To borrow an example from Nietzsche, because a hand grasps does not mean hands were created for the purpose of grasping.

includes those that borrow from psychoanalysis, legitimation theory, and Durkheimian social theory. Loïc Wacquant, for example, is a central contemporary social theorist in the functionalist mode.

Structural approaches emphasize form over content: "What type of thing is it?" "What is the essential structure of the relationship between custodians and their charges?" The intuition behind this line of analysis is to think in terms of equilibria, systems, and deep structures. At their best, structural accounts provide general mechanisms that can link explanans and explanandum across widely varying empirical contexts. However, in their strongest forms, structuralist accounts push a deterministic or mechanistic view of social processes. This complicates analyses of historical change and raises difficulties for understanding the relationship between structure and agency.[23] Marxist political economists largely fit into this approach. Drawing from Rusche & Kirchheimer's classic work, many have persuasively argued (and continue to argue) for a tight relationship between punishment and wider social structures.[24]

Post-structural approaches stress "processes" over structures and emphasize relations over fixed attributes. These theorists ask, "How does a community come to believe that a certain form of custody is natural or correct?" Post-structuralist accounts usually highlight historical contingency and the multifarious discursive and non-discursive influences on particular organizational forms and ideas. However, a focus on contingency has led some scholars to push a bit too far away from causality and causal inference. Post-structural the-

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23. William H. Sewell, "A Theory of Structure: Duality, Agency, and Transformation," *American Journal of Sociology* 98, no. 1 (1992): 1–29.

24. For a review, see Alessandro De Giorgi, *Re-Thinking the Political Economy of Punishment: Perspectives on Post-Fordism and Penal Politics*, Advances in Criminology (Aldershot, England; Burlington, VT: Ashgate, 2006).

orists are influenced by continental philosophers like Foucault and Deleuze or, in the Anglo tradition, by American Pragmatists like Pierce, James, and Dewey.

Cultural approaches aim to evaluate the social meanings latent in a given set of social phenomena. What does custody mean? What does the trustee-charge relationship say about our social values? A central contribution of this perspective is to highlight the importance of symbols and meaning, instead of relegating them to the status of epiphenomena of deeper, "material" structures (e.g. as superstructure). The central theorist of punishment in this vein is David Garland. Others, like Philip Smith and James Whitman, also put culture front and center of their respective analyses.

A full description of the similarities and differences of my approach to others could lead us slogging through a semantic swamp. To avoid this detour, or to limit its length, I'll sketch some of my assumptions without much in the way of a defense. While informed by each of the approaches described above, the theoretical orientation of this dissertation borrows most heavily from post-structuralism. I do not assume that there is a break between structure and agency; there is no pre-social 'self' that battles against wider, deterministic social structures. I treat as a fiction the idea that each of us collects and sheds attributes over a lifetime – ambition, success, failure, intelligence, charity – while remaining, at some base level, "myself," my soul.[25] Individuals are engaged in a constant process of interpreting themselves and being interpreted into a shifting flow of community life.[26]

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25. This goes against many theorists' deepest intuitions. Another way to think about this intuition is the phenomenon of haecceity – the belief in the unique 'thingness' of a given object.

26. However, agency and subjectivity are central themes in my analysis. This project could be framed as an inquiry into what Roberto Unger calls "negative capability" in custodial organizations – "the empowerment that arises from the denial of whatever in our contexts delivers us over to a fixed scheme of division and hierarchy and to an enforced choice between routine and rebellion." Roberto Mangabeira Unger, *Politics: The Central Texts* (New York; London: Verso, 1997), 174.

There is a long history of lamentations in political philosophy calling for better use of data.[27] It's unambiguous, to my mind, that political theory is enriched and extended by the use of empirical cases, whether drawn from the archives, from the field, or from the lab. Accordingly, each of the cases in this dissertation involves an original data collection effort.

In this way, I'm drawing on a rich set of traditions within democratic theory itself. In one tradition, you have philosophers eschewing truth claims, but drawing their analysis from empirical evidence. Rousseau's conjectural history in the *Discourse on the Origins of Inequality*, for instance, drew from available travel logs and personal observations about the natural world to fashion a plausible account of the development of human society.[28] In another, you have authors like Robert Dahl that study democracy inductively, by careful examination of the processes that shape political power in a town like New Haven. It's hard to imagine *Polyarchy* being written without the benefit of his careful research in *Who Governs?* A third strand highlights the distance between normative claims about democracy and contemporary scientific claims about human behavior. This can be used to throw cold water on existing normative accounts, or it can be used to establish the plausibility of new lines of normative argumentation. Jane Mansbridge does the former with the concept of deliberation and the ideal of the town hall, and Carole Pateman does the latter with her claims about workplace democracy.

For some, the relationship between philosophy, social science, and natural science is akin

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27. This often takes the form of conflicts between 'empirical' and 'normative' democratic theory, as well as between ideal and non-ideal theory. On the former, see Archon Fung, "Democratic Theory and Political Science: A Pragmatic Method of Constructive Engagement," *The American Political Science Review* 101, no. 3 (2007): 443–58. On the latter, see James L. Wilson, "Democratic Theory in a Racially Unjust Reality" January 2015.

28. While not strictly in the tradition of democratic theory, I'd include those authors commonly lumped together in the 'hermeneutics of suspicion' tradition (Marx, Nietzsche, Freud) in a similar category.

to an unruly parliament of extremist factions, with each party thumbing their noses at those across the aisle. However, as I see it, social relationships have a logical (conceptual) structure that admits of, and even requires, philosophical analysis. Similarly, we live in *one* world – a world with famines and fantasies, gravity and governments, organisms and organizations. Positing a dualism between nature and society, or body and mind, strikes me as an unhelpful analytical extravagance.[29]

Empirical cases and narrative are also bound together. To tell a story about an event is, at least in part, to explain it. A narrative organizes an event in a chronological sequence and channels that sequence into a plot that has a beginning, a series of intervening events, and an end, usually with an aim to infer cause or interpret meaning. "Plot," according to Paul Ricoeur, is "the intelligible whole that governs a succession of events in any story." Importantly, the narrative mode of comprehension is "configurational," it "puts its elements into a single, concrete complex of relations."[30] Narrative can be disruptive, subversive, and irreverent; or, it can be deterministic, authoritarian, and inescapable. At its best political theory is the former; crafting narrative to bring attention to ideas and aspirations of a particular moment, sometimes only partially articulated, and expose latent assumptions. All while carefully toeing the facts of the historical, scientific, or ethnographic record.

The study below starts with a wider discussion of democratic theory (Chapter 2), then moves to my three core case studies (Chapters 3-5). In those chapters I work inductively, from the warp and woof the particular, and often peculiar, practices that constitute wards

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29. On this point, see John Searle, *Making the Social World: The Structure of Human Civilization* (New York, N.Y.: Oxford University Press, 2010).

30. Paul Ricoeur, *Time and Narrative Volume 1*, ed. Kathleen McLaughlin and David Pellauer (Chicago: University of Chicago Press, 1984).

as agents to wider theoretical claims about custody and democracy.[31] The cases selected are not the product of a random sample, nor do I argue they representative of, for example, prison rebellions and riots generally. I see Walpole, St. Elizabeths, and Winterhill as *edge cases*. An edge case, to borrow a term from computer science, tests the boundary conditions of an algorithm or function. A series of edge cases around a given boundary can be used to assess not only the scope conditions of a function, but also can impact our confidence in the function overall. Put simply, if a theory behaves correctly at the edges, or at the intersection of two edges (a "corner"), then it should increase our confidence that it behaves correctly everywhere else. Conversely, if a theory fails at the edges, perhaps it should be rethought, rewritten, and rebuilt.

While the chapter on custodial responsiveness (Chapter 6) concludes the dissertation, I don't see it as a conclusion. As Bruno Latour wrote of his own work:

> Of course, this study is never complete. We start in the middle of things, *in medias res*, pressed by our colleagues, pushed by fellowships, starved for money, strangled by deadlines. And most of the things we have been studying, we have ignored or misunderstood.[32]

The chapters that follow are the opening of a research agenda. They're more a snapshot of my thinking in progress, and less a collection of fixed results. As a consequence, they're more appropriately read as essays with interweaving themes than chapters that cumulate.

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31. This is in the spirit of Garfinkel's ethnomethodology: "Ethnomethodological studies analyze everyday activities as members' methods for making those same activities visibly rational and representative for all practical purposes, i.e., 'accountable,' as organizations of commonplace everyday activities." Harold Garfinkel, *Studies in Ethnomethodology* (Cambridge, UK: Polity Press, 1984).

32. Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford: Oxford University Press, 2005), 123.

Chapter Overview

I'll briefly describe each chapter in turn.

The next chapter, Chapter 2, forwards the claim that populations understood to be insufficiently self-governing (the cognitively disabled, prison inmates, children) present a thorny problem for theories of democratic participation. I argue the political situation of custodial groups shares important features with the 'democratic boundary problem.' Roughly defined, the idea is that the demos cannot determine itself; that "the people cannot decide until someone decides who are the people." While contemporary scholarship on the boundary problem is primarily concerned with immigration policy, on the liberal democratic state's *external* borders, similar conceptual difficulties arise in the formation of liberal democratic subjects, on democracy's *internal* borders. I suggest both hinge on the ideal of self government; one on collective self-government, the other on individual self-government. Both seek to root a "right to exclude" in democratic principles. And both expose how and why the liberal vocabulary of sovereignty has kept us from a coherent account of participation; or, more precisely, how this vocabulary illuminates certain aspects of participation and democratic life while, or by, obscuring others.

Chapter 3 is the first of my three case studies. Here I draw on a unique archive of notes written by civilian observers, newspaper articles, various accounts of outside witnesses, and inmate oral histories to reconstruct the events inside of a maximum security prison in Walpole, Massachusetts during a crisis in the spring of 1973. Two narratives were used to make sense of the fracas at Walpole. One narrative, rooted in a liberal vision of politics, takes the Walpole episode to be a simple example of bureaucratic failure, a symptom of a

failed treatment or control regimen. Unlike its liberal counterpart, the radical narrative was never systematically enunciated. However, its central principles can be reconstructed from a close reading of the tumultuous events of that spring. The last pages forward the claim that the radical narrative offers a promising alternative account of the relationship between democracy and punishment.

I turn to a series of events inside of a mid-century mental asylum in Chapter 4. Between 1947 and 1965 the rise of therapeutic community approaches to mental health treatment produced an unintended byproduct at Saint Elizabeths Hospital: patient self-government. Over a few short years patients in a maximum security ward for the criminally insane became organized; they came to collectively deliberate and advocate for policy changes at the hospital. Pulling from an extensive collection of archival documents, this chapter describes how the boundaries between group therapy, bureaucratic control, and patient self-government blurred, remixing the values of civic virtue and therapeutic self-expression. I make the case that the rise, and eventual co-optation, of the patient federation at Saint Elizabeths can expand and complicate contemporary accounts of deliberative democracy and democratic participation.

In Chapter 5 I leverage original data from two social network surveys, unique institutional merit and disciplinary records, interviews with staff and children, and months of non-participant observation to explore youth politics in a present-day boarding school for at-risk youth, Winterhill. I find that the children of Winterhill are situated in a no-man's-land between the pulpit of the pedagogue and pews of full citizenship. However, rather than simply resisting or accepting their situation, children often remake it. Sometimes for the better, sometimes for the worse. Children are shaped by contexts that are, in turn, revis-

able. Moreover, I show those revisions can bear on the assumed incapacities that authorize paternal, hierarchical governance in the first place.

Chapter 6 concludes the dissertation. In this short chapter I review key insights from my case studies and reflect on the normative implications of my analysis. The final pages ask how one might imagine custodial arrangements that advance the normative project of democratic self-government *without* repeating the errors of the exclusion thesis, without succumbing to a "false belief in necessity." As a start, I argue, we could begin to think about *responsive* custodial institutions. At the highest level of generality, I define a responsive custodial institution as one that builds civic capacity, treats limits to participation as provisional, and experiments with mechanisms for soliciting voice.

In turning to the organizational politics of schools, asylums, and prisons, I do not mean to judge one institutional form as reactionary (the Patients' Federation at St. Elizabeths Hospital, for example, that I explore in Chapter 4), or another as revolutionary (the organization of the NPRA during the Walpole prison rebellion, explored in Chapter 3). Rather, my central point is that tacit acceptance of the place of custody in democratic societies forecloses an inquiry into the organizational potentials we subsequently recognize as reactionary or revolutionary. Innovations within custodial institutions, as I detail in each chapter that follows, are key places where the possibilities of democracy are reimagined; places where new democratic subjectivities are forged; and places where law is made and remade to anticipate both forms of democracy and forms of authoritarianism to come.

CHAPTER 2

DEMOCRACY'S INTERNAL BORDERS

"The demos must include all adult members except transients and mental defectives."[1] The *exclusion thesis* asserted here by Robert Dahl is so common, so self-evident, that it seems only being mentioned is enough to persuade.[2] Jane Mansbridge echoes, "One obvious exception [. . .] is the case where individuals do not know their interests as clearly as someone else does. We habitually make this assumption, for example, about children and the mentally ill."[3] Benjamin Barber adds law-breakers to the list of exceptions: "Criminals, as criminals, forfeit their citizenship because [. . .] they have ceased to engage in talk, deliberation, and common action and have substituted private force for public thinking."[4] Those we put into schools, mental hospitals, and prisons are *custodial* populations, they are individuals understood to be insufficiently self-governing and, consequently, disqualified from full participation in civic life.[5] They lack maturity (the child), lack rationality (the mad), or lack sociality (the

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1. Robert Dahl, *A Preface to Economic Democracy* (Berkeley; Los Angeles: University of California Press, 1985).

2. While Dahl leaves this exclusion unexamined in *A Preface to Economic Democracy*, he addresses this "inclusion principle" in more detail in a later work. See Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989).

3. Jane J. Mansbridge, *Beyond Adversary Democracy* (New York: Basic Books, 1980), 237.

4. Benjamin R. Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley: University of California Press, 1984), 227–28.

5. Closer to the liberal canon, consider Locke's note on lunatics in the *Second Treatise*: "But if through defects that may happen out of the ordinary course of nature, anyone comes not to such a degree of reason wherein he might be supposed capable of knowing the law, and so living within the rules of it, he is never capable of being a free man, he is never let loose to the disposure of his own will, because he knows no bounds to it, has not understanding, its proper guide; but is continued under the tuition and government of others all the time his own understanding is incapable of that charge. And so lunatics and idiots are never free from the government of their parents: *Children who are not as yet come unto those years whereat they may have; and innocents, which are excluded by a natural defect from ever having.*" On the liminal status of the criminal in Locke, see Andrew Dilts, "To Kill a Thief: Punishment, Proportionality, and Criminal Subjectivity in Locke's Second Treatise," *Political Theory* 40, no. 1 (2012): 58–83.

criminal)[6] – all of which are conceptually necessary to decide, deliberate, or participate in the polity.

It is not just political philosophy, but also social science that regularly operates under the assumptions of the exclusion thesis. Policy reformers are concerned with the effects of ex-felon disenfranchisement, but not with the ability of prison inmates to organize for a minimum wage. Reformers are concerned with educating children for democracy, but not that schools, themselves, incorporate the opinions and desires of children.[7]

When the exclusion thesis is taken to be a conceptual claim about the limits of democratic participation, I argue it simply doesn't stand to reason. Even if internal borders around competence are necessary to a particular conception of democracy, those boundaries are porous and ineluctably contestable. I make the case here that the exclusion thesis illuminates certain aspects of democratic life while, or by, obscuring others. What's obscured is that institutions mediate the relationship between competence and self-government, and that those institutions can be a source of democratic novelty. As a result, the exclusion thesis exacerbates the disparity between the complexity of our empirical examinations of custody and the simplicity of our normative reasoning about custody.[8]

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6. By 'sociality' I simply mean the capacity to relate to, and live with, others in a community. Whether criminals can be convincingly included in the same category as children and the cognitively disabled is, to a degree, contingent on the philosophy of punishment one embraces. Under the dominant paradigms of retributivism, incapacitation, and rehabilitation there is an (often implicit) assumption that simply releasing all law-breakers from custodial supervision (unreformed, unpunished, un-deterred) would threaten the unity, or functioning, of the social relationships underpinning democratic society. If the justification for punishment is simply revenge, then the inclusion of law-breakers is less convincing.

7. There are exceptions, see A. S. Neill's *Summerhill* for example. But, as I argue in a later chapter, even free schools don't completely escape the logic of exclusion and paternalism.

8. I don't mean to imply that normative and empirical claims can be strictly separated in practice. Take a simple example. Even practices as 'empirical' as counting citizens in a census has a normative dimension. Where should prisoners be counted? Their residence, where the crime was committed, or the district where they are incarcerated? An empirical question about how many people live a particular district involves complex and competing values. For a wider inquiry into the disconnection between empirical and normative

Addressing the exclusion thesis is central to the study of democratic politics. Even tacit acceptance sets background limits to what is possible for both empirical and normative theories of democracy. It has implications for the prospect of extending and deepening democratic commitments in contexts that range from care, to education, to punishment.

The section that follows sketches the idea of "democratic exclusions." Unlike ascriptive exclusions, the exclusion of children, patients, and prisoners has a more intimate connection to the ideal of self-government that animates modern democratic theory. In the subsequent sections of this chapter I suggest that the exclusion thesis shares a structural resemblance to what contemporary political theorists describe as the "democratic boundary problem," and that this similarity offers an in-road to understanding the particular and peculiar place of participation in custodial contexts. After describing how existing theories create an analytic impasse, I motivate an alternative approach to investigating democracy's internal borders.

Democratic Exclusions

The situation of prisoners and mental patients are usually taken to be paradigmatic cases of formal exclusion, even civil death, and the lives of young children are a reminder that we are born into radical dependency, not freedom. Importantly, these exclusions are *democratic*. While the institutional prescriptions of aggregative, deliberative, and participatory democrats vary, major authors in each tradition mark out custodial populations having a special and unequal status. Aggregative democrats tend to treat the individual as the best authority on her own interests and seek to organize the polity along the lines of expressed

reasoning in social theory, see Andrew Abbott's 37th Annual Marc Bloch Lecture, "The Future of the Social Sciences."

or revealed preference. Some individuals, however, are thought not to know their interests, and are placed under a form of liberal guardianship.[9] Deliberative theorists have a more demanding set of prescriptions for democratic institutions. What distinguishes noise from speech in deliberative contexts is the presumption that interlocutors are autonomous and reasonable. Children, for example, fail to meet these standards and need to be gradually introduced to the discursive community.[10] Participatory democrats offer the most demanding vision of the polity, calling for the democratization of almost all spheres of life. For Barber, the limits of calls for universal inclusion are clear: "even those who most zealously honor the principle of universality find themselves bending the abstract boundaries of the biological species when dealing with the civic role of children, criminals, the insane, and foreigners."[11] Children are potential citizens, as are criminals; full citizenship lies in wait for each group to acquire the ability or will to claim their civic rights.

In each tradition the aim of universal democratic inclusion is tempered by the vagaries of competence. Commenting on the intellectual history of human rights, Jennifer Pitts notes that "universalisms always take a particular form, with respect to the metaphysical framework in which universal claims are made as well as the anthropological qualities asserted to be universally human." Childhood, madness, and criminality cast in relief these particular conceptual features, acting as edge cases for claims about the nature of subjectivity and human capabilities in theories of democracy. The "half-hidden premises, unexplored assump-

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9. For a contemporary example of this line of thought, consider the political theory of Nadia Urbinati.

10. Ian Shapiro, for example: "The central challenge of adult-child relations pose for democratic justice is that they are inevitably hierarchical and inegalitarian. But the challenge changes. Children evolve from conditions of utter dependence on adults, to circumstances where equality is possible, to reversed conditions, where once-independent adults become increasingly feeble and dependent sometimes on their adult children, sometimes on others." Ian Shapiro, *Democratic Justice* (New Haven: Yale University Press, 2001), 69.

11. Barber, *Strong Democracy*, 225.

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tions, and unacknowledged antecedents" of a given universalism form a "vaguely perceived shadow theory that forever dogs the footsteps of explicit, public theories of democracy."[12]

What does exclusion in the "shadow theory" of democratic citizenship look like? To start, exclusions in democratic polities can be broad. The exclusion of racial and ethnic minorities, women, those that hold views anathema to the founding narratives of the nation, among others.[13] The prevalence of exclusions reflect the tendency of democracies to disqualify from a full schedule of rights those who can't or won't fit into the identity of the popular majority.[14] On one formulation, these kinds of exclusions are simply mile markers on the path to total inclusion.[15] A less optimistic interpretation is that these exclusions persist because they take the form of a 'wicked' policy problem,[16] and often require large (even generational) shifts in attitudes to solve.

That said, the exclusion of children, the mad, and criminals are democratic exclusions in multiple senses of the word *democratic*.[17] For one, the disqualification of these populations is the product of a particular liberal-democratic state making project. Under a monarch,

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12. Dahl, *Democracy and Its Critics*, 3.

13. See generally Charles Taylor, *Dilemmas and Connections: Selected Essays* (Cambridge: Harvard University Press, 2011); Iris Marion Young, *Inclusion and Democracy* (Oxford; New York: Oxford University Press, 2000); Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge: Harvard University Press, 1991).

14. Taylor, *Dilemmas and Connections*.

15. A kind of Millian perfectionism, or Myrdal's *American Dilemma*.

16. Among other features, a "wicked problem" is one that that is difficult to formulate, novel, and doesn't admit of a clear, definitive, or uncontroversial solution.

17. As Goodin notes, *exclusion* may not be the best way to couch concerns over democracy. The term is often used euphemistically to refer to issues as varied as participation, citizenship, and migration, to the detriment of analytic clarity: "inclusion talk threatens to submerge and subvert other equally genuine concerns – concerns with are logically better expressed, and politically better pressed, in terms of their own, more familiar phrases." Robert E. Goodin, "Inclusion and Exclusion," *European Journal of Sociology*, no. 2 (1996), 351. That is, the illusion of thematic unity obscures the fact that different kinds of questions – about entry, about rights, about exit – invite different sorts of arguments.

for example, everyone – mad or sane, child or adult – is equally subject to the crown.[18] Legitimacy based on consent introduced the link between competence and inclusion. For another, these are disqualifications agreed upon, or legitimated by, democratic procedures. In other words, these groups are excluded by tacit or explicit majorities.[19] And finally, they are democratic exclusions in the sense that each group is understood to be unable or unwilling to meet the basic conditions for democratic participation.[20] In sum, the exclusion thesis is a weave of claims about democratic provenance, democratic procedure, and democratic principle.

These claims, in turn, contain a mix of empirical and conceptual propositions. Emphasizing provenance and procedure, exclusion appears as historically and culturally contingent. Different origins, for example, might mean that an otherwise disqualified group (custodial or otherwise) is enfranchised. Likewise, with procedure. A different majority or different set of laws might lead the boundary line dividing competence from incompetence to be drawn differently. One could imagine, for instance, allowing young children to participate in municipal budgeting.[21] Alternatively, the mechanism behind exclusion could be *cohesion*, the idea that custodial populations cannot be assimilated (un-reformed, un-educated, or un-healed) without harming the identity of the wider demos.[22] Here, again, one can imagine a

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18. David Archard, *Children: Rights and Childhood* (New York: Routledge, 2004).

19. Taylor, *Dilemmas and Connections*.

20. Barber, *Strong Democracy*.

21. Consider an example from Brazil: "Children elect their peers to a children's council, which has at its disposal a small portion of the municipal budget equivalent to about US $125,000, for use on the priorities determined by the council." Eliana Guerra, "Citizenship Knows No Age: Children's Participation in the Governance and Municipal Budget of Barra Mansa, Brazil," *Environment and Urbanization* 14, no. 2 (2002): 71–84, 71.

22. This is an extension of Taylor's argument in Taylor, *Dilemmas and Connections*.

counterfactual where institutional innovations channel the force of cohesion towards greater inclusion. Provenance and procedure invite a discussion of historical and empirical possibilities, but don't provide a compelling conceptual reason to treat custodial populations as different in kind from ascriptive exclusions.

The exclusion thesis, I suspect, is rooted in a deeper claim from principle. The sensitivity to "non-sovereignty," "relationality," and "vulnerability" in the outer, social world tends not to be extended to the inner world of competence. Democratic theorists, at least for custodial populations, define the boundaries of demos *pre-politically*. By "Pre-political" I mean "prior, both causally and constitutively to the exercise of political power."[23] 'Custody' is taken to be causal in the sense that the categories child, mad, and criminal are not the mere effect of political imposition, but arise organically from the actual, or true features of members of that population. And it is pre-political in the constitutive sense insofar as members are understood to share some distinct set of properties that do not amount to being subject to the same political institutions, or to it having been decided, by authoritative political procedures, that they share the same properties.[24]

Dahl, for example, recognizes the difficulties that competence creates for a theory of democracy. However thoughtful his vision of democratic life, he treats the core values of democracy – "intrinsic equal worth," for instance – as an engineer would. He takes the social system as given, accepts its account of itself, and develops a normative theory with an eye towards helping society achieve what it claims to value given those facts of the matter. Something similar obtains in the participatory democratic tradition. Barber, like Dahl,

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23. Arash Abizadeh, "On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem," *American Political Science Review* 106, no. 4 (2012): 868–69.

24. Abizadeh, "On the Demos and Its Kin," 868–69.

acknowledges the ambiguities around the borders of citizenship. In aggregative democracy, he writes, boundaries are a function of agreement and thus a matter of contract, of what we *agree* to. In unitary systems it's a matter of identity, of who or what we *are*. And in "strong" participatory democracy, boundaries are a function of activity, of what we *do*. In this last form, Barber's participatory approach, the scope of citizenship itself becomes a subject of ongoing discussion and review, "and one's participation in such discussion becomes a brief for inclusion."[25] However, to avoid exclusion by the vagaries of power, Barber backs down from rejecting pre-political foundations entirely. "If the idea of open citizenship is not to become a one-way door through which undesirables are continuously ejected, it must be conditioned by the premise of biological universality." As with Dahl, this premise underscores a need to separate claims about personhood from claims about the proper domain of participatory democratic politics. Underneath a diversity of ontological assumptions, for which Dahl and Barber are representative, democratic theorists tend to share a single imagination about place of competence in democratic life.

The pre-political claim about democratic exclusion does a lot of intellectual work. It's not simply that it squares authoritarian forms of governance with otherwise democratically organized societies, though that's often the case. The pre-political claim facilitates large-scale, often radical interventions into human lives – "authoritarian," "participatory," or otherwise. By creating and reinforcing a categorical division between an arena for democratic, self-governing citizens and a domain where paternalism is necessary, appropriate, and effective, the exclusion thesis insulates the design of institutions like prisons, hospitals, and schools

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25. Barber, *Strong Democracy*, 227.

from critique.[26]

Significantly, there are a series of propositions the exclusion thesis does *not* imply. For one, exclusion does not imply abandonment. A tremendous amount of resources are marshaled to *include* custodial populations into the polity. The public – that is, those that are not in custody – is tasked with securing basic interests of wards. A 'special status'[27] is assigned (inmate, mentally ill), and particular set of institutions are tasked with realizing the general obligations associated with that status. Ian Shapiro describes the relationship as fiduciary; representatives of the state hold a ward's rights of democratic citizenship in trust until he, she, or they are cured, educated, or rehabilitated.[28]

For another, exclusion is not all or nothing. The "braid of citizenship rights" is in practice unwoven in liberal democracies. "Rights not only come unbraided from each other, but each individual strand can fray. Types of citizenship rights can become disaggregated from one another and from their own constituent parts."[29] The right to vote, the right to travel between jurisdictions, and the right to own a gun can be disaggregated from the more general right of citizenship. In addition, each right – for instance, the right to travel – can,

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26. There is a clear analogy, albeit imperfect, to what Harcourt describes as "neoliberal penality." See Bernard E. Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* (Cambridge: Harvard University Press, 2011).

27. I have in mind Goodin's discussion of special obligations. Robert E. Goodin, "What Is so Special About Our Fellow Countrymen?" *Ethics* 98, no. 4 (1988): pp. 663–86.

28. Shapiro uses the example of children. Sharon Dolovich uses a similar line of argument to describe the situation of inmates. See her incisive discussion of a society's "carceral burden" in Sharon Dolovich, "Cruelty, Prison Conditions, and the Eighth Amendment," *New York University Law Review* 84, no. 4 (2009).

29. See Elizabeth F. Cohen, *Semi-Citizenship in Democratic Politics* (Cambridge; New York: Cambridge University Press, 2009). This unbundling is not necessarily pernicious, "This suggests that citizenship rights are independent of, rather than contingent upon, each other; that is, each right exists because it is valuable in itself, not because it makes the exercise of other rights possible. Such independence lends strength to citizenship because it allows some types of rights to be conferred on individuals even if they do not qualify for other rights. Under these conditions it is much less likely that an individual who does not meet the qualifications for full citizenship will be left completely rightless."

itself, be disaggregated and graded.

Furthermore, exclusion does not mean that protest and activism by custodial populations is met with silence. Institutions tasked with managing these populations are sites of ongoing struggle. The historical record is replete with both mundane and extreme examples of protest and participation in communities of convicts, patients, and children. And, at various moments, the voices of wards are heard and policies are changed.[30]

However, even when wards explicitly protest their situation, they are still not part of the *demos*, of civilized society. Consider the situation of children. While there is no one view of childhood that emerges from the liberal tradition, there is general shared intuition that persists to this day. This intuition, what I refer to in a later chapter as *liberal paternalism*, is that childhood constitutes a special status, and that status has a dual character. On the one hand, children are in need of protection; they are dependent on others for their basic care, and they need time to experience, learn, and play without facing serious consequences for their choices. On the other, this means children live under a form of guardianship where their voices and actions have only consultative value. The crux of the liberal paternal intuition is that children cannot fully consent, yet they can justly be assimilated into the liberal polity. Put simply, "present compulsion is a precondition of subsequent choice."[31] Similar arguments are made in the context of cognitive disability and imprisonment: "Given the lawless and uncivilized character of their citizens, inmate societies ought [...] to be subject to strong official controls and a tight, mandatory regime of work and programs."[32]

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30. Consider, for instance, the Court's involvement in reforming the U.S. prison system in the 1960s. See Malcolm Feeley and Edward L. Rubin, *Judicial Policy Making and the Modern State: How the Courts Reformed America's Prisons* (Cambridge: Cambridge University Press, 1998).

31. Archard, *Children*, 81.

32. John J. DiIulio, *Governing Prisons: A Comparative Study of Correctional Management* (New York,

The claims of wards, when heard, are simply data to be interpreted by others. They are a symptom of a failed treatment regimen or, perhaps, evidence of inadequate conditions of confinement.

One might think that institutions with wards that have little voice over the conditions of their lives would, on face, be incompatible with the demands of constitutional democracy. However, an extension of the exclusion thesis is that the reference 'public' that holds custodians democratically accountable is outside institutional walls and, consequently, there is no democratic deficit created by (for instance) authoritarian forms of custody, care, or schooling.[33]

Constituting the Demos

The question of who is or is not a member of the public, the demos, is not so easily settled. The logic of the exclusion thesis runs into what some political philosophers have termed the "boundary problem."[34]

Shapiro and Hacker put it bluntly: "An enduring embarrassment of democratic theory is that it seems impotent when faced with questions about its own scope." That is, there are no clear answers about who should be included or excluded in a democratic decision-making process. 'We the people' is a deceptively simple formula for democratic rule. "Before the people can decide, one must first decide who are the people." This 'boundary problem,'

N.Y.: The Free Press, 1987), 46.

33. Prisons, schools, and other custodial organizations *need not* be hierarchical, but if they are no one raises an eyebrow. Or, if they are participatory, the central concern is treatment outcomes, not voice.

34. See, among others, Frederick G. Whelan, "Prologue: Democratic Theory and the Boundary Problem," *Liberal Democracy* 25 (1983).

and related paradoxes of democratic governance,[35] has been an object of sustained analysis for contemporary democratic theory.[36] While most of the debate has centered on migration across *territorial* borders, thinking of the boundary problem spatially obscures more than it clarifies. I prefer Robert Goodin's re-description of the boundary problem as a problem of "constituting the demos."[37] Questions of membership need not involve literal borders, as I'll detail below.

How to constitute the demos is not a peripheral problem, nor is it simply a question of how to found a polity. As a number of scholars have highlighted, simply treating borders as morally or politically neutral leads to both incoherent and undesirable outcomes.[38] Creating a boundary is a paradigmatic instance of the exercise of political power; to place it outside the scope of democratic theory is to, in effect, overlook a kind of theft.[39] Moreover, every time a decision is made or a law is enacted the problem of how to constitute the demos rears its head.[40] A law is legitimate only insofar as it refers back to the persons over whom power is exercised. Democratic legitimacy is inextricably tied to the borders of membership.

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35. Have in mind the paradox described by Bonnie Honig; that one needs good people to have good law and good law to make good people. Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton: Princeton University Press, 2009).

36. For a review, see Sarah Song, "The Boundary Problem in Democratic Theory: Why the Demos Should Be Bounded by the State," *International Theory* 4, no. 1 (2012): 39.

37. Robert E. Goodin, "Enfranchising All Affected Interests, and Its Alternatives," *Philosophy & Public Affairs* 35, no. 1 (2007): 40–68.

38. There are a variety of examples one could derive via a *reductio ad absurdum.* For example, egalitarian decision-making by Hitler's cabinet would, on a strictly procedural account, make Germany in the late 1930s democratic. See Dahl's rejection of Schumpeterian proceduralism in *Democracy and Its Critics.*

39. Here I have in mind Rousseau's discussion of the injustice of enforcing property law without there having been an initial redistribution of goods among the population.

40. "Yet this paradox of democratic legitimacy has a corollary which has been little noted: every act of self-legislation is also an act of self-constitution. 'We, the people,' who agree to bind ourselves by these laws, are also defining ourselves as a 'we' in the very act of self-legislation." Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge, UK; New York: Cambridge University Press, 2004), 45.

If one cannot safely ignore the significance of borders (for the sake of coherence or for the sake of preserving a normatively defensible vision of democratic governance), then normative theorists are faced with three main options: advocate open borders, abandon a total theory of democracy, or seek out a democratic principle to justify a given boundary. In the context of international migration and nation-states, those concerned with recognizing cultural identity and diversity find the first option incoherent[41] and committed cosmopolitans abhor the defeatism of the second.[42] Most academic debate over the last decade has centered on the third option, finding a set of principles internal to democratic theory by which a particular border regime can be justified.

The two principles that serve as lodestones in the debate are the "all-affected interests" principle and the more circumscribed "subjection"[43] principle. The former principle is inspired by Robert Dahl, the latter by theorists of autonomy like Joseph Raz. Rather than ask what institutions ought to exist, interlocutors in this debate reverse the question of legitimacy. Given a particular immigration policy – say, for example, the institutions that regulate migration across the U.S.-Mexico border – what is necessary to secure legitimacy? That is, given that a border stands in need of some justification, what would be required to secure that justification? This form of "institutional theorizing"[44] about borders has lead to a productive debate about who, precisely, is owed such justifications. Is the mere presence of a wall along a border coercive?[45] Who, precisely, is affected by the decision to burn coal

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41. Michael Walzer, David Miller.

42. Seyla Benhabib, Arash Abizadeh.

43. Also referred to as the "coercion principle."

44. Michael Blake, "Distributive Justice, State Coercion, and Autonomy," *Philosophy & Public Affairs* 30, no. 3 (2001): 257–96.

45. David Miller, "Why Immigration Controls Are Not Coercive: A Reply to Arash Abizadeh," *Political*

for fuel?[46]

These questions, however, don't appear to admit of a clear and uncontroversial answer. David Miller provides a persuasive explanation for the persistence of controversy. For Miller, ideals of democracy are caught between an inclusionary push (liberalism, the centrifugal extension of rights) and an exclusionary pull (republicanism, the centripetal forces of cohesion and solidarity). He writes:

> My question has been whether democratic theory itself can give us an answer to the question of democracy's domain, and my answer to it is that we must strike a balance between the need to have a demos that functions well internally and the need to include within the demos those whose lives will be systematically impacted by its decisions. [...] These are difficult questions to answer. Because trade-offs are involved, there can be no algorithm for deciding whether any proposed shift of domain represents a democratic gain or a democratic loss. For the same reason, we should not think that domain questions can be resolved through the rulings of some external committee of experts. Instead they are questions that must be debated within existing demoi whenever proposals for altering boundaries appear on the agenda.[47]

Every demos has a particular conception of democracy, and that particular conception will impact whether a given reconstitution of the demos produces a democratic gain or loss.

This concern, of course, needn't enter the conversation about custody if exclusions are

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Theory 38, no. 1 (2010): 111–20.

46. Goodin, "Enfranchising All Affected Interests, and Its Alternatives."

47. David Miller, "Democracy's Domain," *Philosophy & Public Affairs* 37, no. 3 (2009): 228.

(as noted in the previous section) taken to be pre-political. Here, too, the discussions of the borders of the nation state can trouble the intuitions of the exclusion thesis. Arash Abizadeh argues that appeals to a pre-political 'nation' to ground the demos faces a problem of closure, "the problem that neither specifying the putative boundaries of *cultural groups* (which individuals?) nor specifying those of cultures themselves (what criteria?) admit of determinate answers."[48] On any given feature that might assign membership to the group – shared history, shared language, shared values, shared ethnicity – there is no clear bright-line to delimit membership. To say that the problem of closure exists is not to say that a category is simply or strictly a product of social convention or prejudice. Nor is it to say fuzzy boundaries imply the absence of a difference in kind.[49] What closure means is that there is not a decisive criterion for membership, that the line marking the category is essentially (and intractably) contested, and that the demos is, in Abizadeh's terms, necessarily *unbounded*.

What is true of culture, I argue, is also true of custody. The categories that we currently use to define the life course – infancy, child, adolescence, youth, adult – don't admit of clean borders, vary by culture and context, and are the product of particular, and at times peculiar, histories.[50] Likewise with madness. The history of the Diagnostic and Statistical Manual of Mental Disorders (DSM) gives a sense of the difficulties and uncertainties endemic to psychiatric classification.[51] Moreover, much ink has been spilled on historical

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48. Abizadeh, "On the Demos and Its Kin," 869.

49. Just because one cannot point to the precise moment red becomes blue on the color spectrum, for instance, does not mean that red and blue are the same or that the categories red and blue are incoherent.

50. The distinct period of life we now call 'adolescence' can be traced to G. Stanley Hall and the rise of developmental psychology in the early 20th century. More recently, others have described the emergence of a new category, "youth," that encompasses the period between adolescence and one's mid-twenties.

51. For a persuasive discussion, see Jonathan Metzl, *The Protest Psychosis: How Schizophrenia Became a Black Disease* (Boston, MA: Beacon Press, 2009).

continuities and discontinuities in defining crime and criminality.[52] Custodial populations are invariably hybrid. Madness bleeds into sanity, youth into in adulthood, criminal into lawful. And even small shifts in definition can have a significant impact on disqualification or enfranchisement.[53]

As a consequence, some sort of external "supplement" is needed to anchor the boundaries of the demos.[54] In the case of custody, that supplement is usually a particular system of professional knowledge[55] – psychiatry, criminology, developmental psychology – or a cultural script – collective beliefs about the transition to adulthood, for example.[56]

The need for a supplement highlights how competence is a social, not natural fact. In distinction to natural facts, social facts cannot be reduced to the sheer physical attributes of the object in question. Social facts are characterized by the collective assignment of functions to phenomena – the attribution of a status – that is both nonphysical and non-causal.[57] Again, this is not to say that social facts are entirely "made up." Observer-independent features of the world can and do condition the attribution of a status to an object. It's just

52. Most famously, see Michel Foucault's discussion of the delinquent as an organization of 'illegalities' in his masterwork *Discipline and Punish*. Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995 [1977]).

53. Compare the class of felonies in 1920 to the class of felonies in 2015. Or, more simply, number of people impacted by raising or lowering the age of consent.

54. Abizadeh, "On the Demos and Its Kin," 873.

55. Have in mind Andrew Abbott's work on professions, in particular. See Andrew Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (Chicago: University of Chicago Press, 1988).

56. For an illuminating discussion of this point, see Jennifer M. Silva, "Constructing Adulthood in an Age of Uncertainty," *American Sociological Review* 77, no. 4 (2012): 505–22.

57. To use an example from John Searle, consider a screwdriver: "When I describe it as a screwdriver, I am specifying a feature of the object that is observer or user relative. It is a screwdriver only because people use it (or made it for the purpose of, or regard it as) a screwdriver. The existence of observer-relative features of the world does not add any new material objects to reality, but it can add epistemically objective features to reality where the feature in question exists relative to observers and users." John Searle, *Making the Social World: The Structure of Human Civilization* (New York, N.Y.: Oxford University Press, 2010).

that the physical features of the object do not determine or exhaust the content of the fact.[58]

Bringing the two strands of argument together, the exclusion thesis faces two difficulties. The first difficulty is metaphysical, that claims about democratic gains and losses are necessarily internal to a particular conception of self and democracy.[59] And the second is ontological, that the boundaries around the categories of child, criminal, and mad are necessarily porous.[60] As a consequence, potentially all practices of exclusion based on competence are open to contest, re-signification, and deinstitutionalization. In the place of the exclusion thesis we're left with an absence, a line of inquiry, not a set of answers: an inquiry into the forms of democracy proper to a world where the boundaries of the demos are in flux. The challenge is to reconfigure our intuitions without resorting to the distortions of the exclusion thesis, without treating empirical constraints as conceptual limits.

Border Politics

Faced with the reality of porous borders, and unable to rely on the twin illusions of competence as a natural fact and of closure, another analytic perspective presents itself. To start, we ought to flip the question traditionally asked about competence. Instead of asking about entry and exit from the category 'competent citizen' (under what conditions is someone rightfully labeled mad, what legal criteria ought to be used to assess maturity), we

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58. Gusfield's brilliant study of drunk driving makes this point. Yes, there is a physiological (ontologically objective) reaction to the consumption of alcohol, but the status assigned to drunk driving is a product of collective belief. Joseph R. Gusfield, *The Culture of Public Problems: Drinking-Driving and the Symbolic Order* (Chicago: University of Chicago Press, 1981). This is also why accounts of madness, childhood, and criminality divided along the lines of 'realism' and 'nominalism' create more confusion than clarity.

59. Upshot of David Miller's argument.

60. Upshot of Arash Abizadeh's argument.

should ask what it means to be a self-governing individual in a society where individuals are constantly entering and exiting the category of competence.[61] A society where well over 90 percent of those currently in prison will be released; where children can be tried as adults; where cognitive disability at some point in the life course is an expectation, not an exception.

While the 'self-governing individual' of the exclusion thesis may be a fiction, it is important to note that it is a *useful* fiction. It is an attempt to mold a complex, unruly, and unwieldy reality in line with a simple set of ordering principles.[62] One mustn't confuse the model for the messy reality that model seeks to represent.

For a model of democracy to be complete it must both define a set of values (such as accountability, liberty, and political equality) and prescribe governance institutions (such as elections, deliberation, direct participation).[63] Values and institutional practices are typically connected deductively by presuming stylized empirical facts about the political psychology and capabilities of individuals and about socio-political dynamics.[64] Models, of course, often run afoul of empirical realities. The dynamics of group deliberation, for example, rarely resemble the ideal speech situations imagined by deliberative democrats.[65] If a particular institutional configuration fails to meet an empirical reality, Archon Fung explains, two forms of revision are possible:

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61. This is precisely the move Benhabib makes in her studies of international migration and cosmopolitan institutions. See Benhabib, *The Rights of Others*; Seyla Benhabib, *Dignity in Adversity: Human Rights in Troubled Times* (Cambridge, UK: Polity, 2011).

62. Benhabib makes a parallel point about the assumption of (Westphalian) sovereignty in international politics. Abizadeh, "On the Demos and Its Kin"; Benhabib, *The Rights of Others.*

63. See Archon Fung, "Democratic Theory and Political Science: A Pragmatic Method of Constructive Engagement," *The American Political Science Review* 101, no. 3 (2007): 443–58.

64. Fung, "Democratic Theory and Political Science," 444.

65. Jane Mansbridge's classic study, for instance. Also, see Iris Marion Young, *Justice and the Politics of Difference* (Chicago: University of Chicago Press, 1990).

When facts may make it clear that a received institutional prescription (everyone should participate in direct deliberation) fails to advance the values (self-government, participation, political equality) that justify it, the first response is to cast about for alternative institutional arrangements that better realize those values. A second response is to revise the democratic values themselves in ways that respond to the possibilities and constraints revealed by empirical analysis or reduce vagueness or inconsistency in a conception's values.[66]

Organizational innovation and normative innovation are two of a piece. In a phrase: democratic forms and forms of democracy inform, transform, and deform one another. In Chapter 6 I argue this is a virtue, not a vice for thinking about democratic reform.

The model of democracy implied by the exclusion thesis is one where a straight line can be drawn between ontology and politics. By relaxing the connection between competence and self-government, another set of mediating relationships come into view: a complex ecology of claims for recognition, institutional response, and legal articulation that call the boundaries of the public into being.

In short, institutions mediate, not simply reproduce, the relationship between human capability and political conflict. In this light, custodial institutions like the prison ought to bring two images to mind.[67] One is of hospitals, penitentiaries, schools, and shelters where ailments are diagnosed, treatments administered, and professional knowledge accumulated. In contrast to the image of an orderly, scientific organization is one of a mass of people working and living together in a defined place over time. According to Donald Clemmer,

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66. Fung, "Democratic Theory and Political Science."

67. See Andrew Abbott, "The City of the Mad" 1975.

these two images describe two points of reference, the custodial organization as "both an area of service and an area of participation."[68]

Thus, the history of any given custodial organization is a history of two institutions. On the one hand, it is the history of particular coteries of experts employing particular systems of knowledge over particular groups of people.[69] The "system of professions" that governs custodial institutions fluctuates over time, with particular professions gaining and losing jurisdiction over particular client groups and problems.[70] On the other hand, the history of a custodial organization is a chronicle of a community,[71] or set of communities, where thousands of people have lived out significant segments of their lives. Classic ethnographies of the prison by Donald Clemmer,[72] Gresham Sykes,[73] John Irwin,[74] and James Jacobs,[75] note how different processes of community life – markets, movements, legal structures, patronage, punishments – are reproduced in custodial contexts and how networks of dependency link custodians to their charges.[76]

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68. Donald Clemmer, *The Prison Community* (Boston: Christopher Publishing House, 1940), 87.

69. See Michel Foucault's classic *Discipline and Punish*, for example.

70. See Abbott, *The System of Professions*.

71. There are problems with describing the prison as a community. A quick glance at the difference between a town of 5,000 people and a prison housing the same number makes this obvious. However, I agree with Donald Clemmer that it is methodologically helpful to think of the penitentiary as a "prison community." See Clemmer, *The Prison Community*, 84-88.

72. Clemmer, *The Prison Community*.

73. Gresham M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton, N.J.: Princeton University Press, 1958).

74. John Irwin, *The Felon* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1970).

75. James Jacobs, *Stateville: The Penitentiary in Mass Society* (Chicago: University of Chicago Press, 1977).

76. This line of analysis is indebted to the community studies of the early Chicago Schools of Sociology and Political Science. These two schools are in the shadow of the figures of Charles Merriam and Robert Park. See generally M.T. Heaney and J.M. Hansen, "Building the Chicago School," *American Political Science Review* 100, no. 4 (2006): 589–96 and Andrew Abbott, *Department & Discipline: Chicago Sociology at One Hundred* (Chicago: University of Chicago Press, 1999).

These two institutional histories, of course, are enmeshed in one another. The politics of professional knowledge and the politics of community life do not exist on different registers of analysis; knowledge, organization, and community culture mutually condition each other's functioning.[77] As a consequence, custodial institutions are ideally situated to demonstrate the intimate connections, or disconnection, between competence and self-government.

Prison Democracy?

The idea of mapping the democratic possibilities of custody might strike some as a fool's errand. First, not all structures in a democratic society need be deliberative, participatory, or representative. It may be that an alternative style of governance better produces the needed good or forwards the desired aim. What one theorist calls a 'democratic gain,' another might call an inefficiency or a hazard. Prisons might be safer without mechanisms for deliberation; the treatment of the mad might be more effective when participation is strictly curtailed; children might learn more with strict discipline. Second, and related, one could argue that the problem with many custodial institutions is not that they are insufficiently democratic, but that they simply should not exist. Pushing to democratize borders, perversely, might only increase the longevity of a diseased set of institutions.[78] An emphasis on organizational innovation comes at the cost of advocacies for abolition – de-carceration, de-institutionalization, and de-schooling.

Consider three tentative responses to these concerns. For one, it's certainly true that all

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77. See Mary Douglas, *How Institutions Think* (Syracuse, N.Y.: Syracuse University Press, 1986).

78. Here I have in mind advocates of prison abolition, but there is a larger body of anarchist thought on reformism that speaks directly to this argument.

institutions need not, or ought not, have the same shape and structure. And it's clear that 'participatory' institutional designs can forward authoritarian ends, just as hierarchical controls can be put in the service of democratic values.[79] This observation is, in an alternative form, a restatement of critiques of strictly procedural accounts of democratic politics. Not only are the who and how of democracy connected (as we saw above through the 'boundary problem'), but also the 'why.'[80] In other words, democracy entails substantive value commitments, not just procedures and a definition of the demos. This precisely why it is important to recognize the generative relationship between democratic values, institutional forms, and human capability described above.

Second, a concern for the relationship between democracy and custody ought to outlive any particular institutional configuration. Abolition, to my mind, doesn't so much describe an end-state as define a process, a politics. Frederick Douglass's plantation politics were, after all, non-foundational and participant-based.[81]

Third, it's true that the values of efficiency, care, and democracy often conflict. However, it's unclear to me why dreams of popular rule ought to be set aside in favor of fantasies of technical control. Both a concern for efficiency and a concern for democracy involve particular normative commitments, and the entire discussion over the proper shape and scope of custody is enriched by mapping the possibility space of potential institutional configurations. The most pernicious effect of the exclusion thesis is to constrain our democratic imagination. One of the tasks of political and social theory, as I understand it, is to explore the horizon

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79. This is a point I make throughout my dissertation.

80. On this point, see Song, "The Boundary Problem in Democratic Theory."

81. Robert Gooding-Williams, *In the Shadow of Du Bois: Afro-Modern Political Thought in America* (Cambridge: Harvard University Press, 2009).

of possibility in our historical moment.

Sympathetic readers, at this point, might balk. It's fine to think of someone ill, young, criminal as a full rights bearing citizen, perhaps even capable of participation, but it stretches credulity to envision letting these populations have power. Or letting them out. They're dangerous, the argument goes, they're vulnerable, they're afraid, they're ill; at bottom, there is a straightforward need for social defense and protection. To complicate matters, it's not clear that accepting a patient's refusal of treatment (for example) is universally autonomy affirming.[82] The imperatives of safety, care, education must be prior, in some sense, to concerns about democracy and inclusiveness.

For one, I agree. A school that doesn't teach, a hospital that doesn't heal, a prison that doesn't protect, is socially useless. Even worse than useless, wasteful. A government that can't govern, I'd add, also fits into that category.

For another, democracy cannot, or ought not, drop out of concern simply because there is some other overriding social function. Claims about priority, and inferiority, are ineluctably context specific. Part of the virtue of Carole Pateman's contribution to democratic theory, for instance, was to demonstrate the empirical possibility of reconciling these competing values (production, participation) in practice. Only in this set of cases, custody instead of the workplace, there is little tradition to pull from that justifies putting concerns about participation onto an axis at all, even if subordinated to some other local or global imperative.

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82. "I stopped taking my medication again. [...] I felt fine or a day or two; ecstatic, even. By day five, I was completely and floridly psychotic, convinced that evil beings were about to destroy me. I gibbered; I cowered. I couldn't work, and the end of the final term was coming up. Finally, White insisted: back to the Navane, and increase it again. The effect was almost immediate, but instead of being relieved, I was angry. *I'm sick of this.* It all came down to supporting the patient's choice – didn't it? If I was competent when I decided to stop taking the meds, then it was a competently made decision. A decision made by a competent person. Wasn't it?" Elyn R. Saks, *The Center Cannot Hold: My Journey Through Madness* (New York: Hyperion, 2008), 210.

Conclusion

The exclusion thesis has lured not just democratic theorists, but also those humanitarians that want to reform prisons, hospitals, and schools: the figure of the competent, 'self-governing' citizen shapes our vision of democratic politics, largely without our awareness. I've argued that this ideal permits policies that appear on-face to be authoritarian to be uncritically squared with our liberal-democratic political imagination. When claims are raised by custodial populations, they are viewed as demands for care and not as demands for voice.

Those who define the boundary of the public to exclude children, criminals, and the mad pre-politically are mistaken to think their position rests on a self-evident truth. The problem of closure, the exclusionary push and inclusionary pull internal to visions of democracy, along with the mediating role of institutions in forming and reforming democratic values all undermine the taken for granted claim that children, the mad, and law-breakers are simply not part of the demos.

None of this is to deny the reality of actual exclusion, incompetence, and dependence. It is a demonstrable fact that the demos *is* often constituted in precisely the ways aggregative, deliberative, and participatory democratic theorists describe. And there are a variety of empirical reasons why the demos is (or ought to be) drawn to exclude these groups – at least under existing social conditions. However, by collapsing conceptual limits into empirical limits we're left with an imagination constraining *misdescription*.[83] It's a difference in kind

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83. This claim is echoed by other social and political theorists. Consider Sewell's discussion of agency and structure: "Structures, I suggest, are not reified categories we can invoke to explain the inevitable shape of social life." William H. Sewell, "A Theory of Structure: Duality, Agency, and Transformation," *American Journal of Sociology* 98, no. 1 (1992): 1–29. Likewise, Abizadeh's warning that "one must be careful not to redescribe the empirical phenomena in terms of conceptual or metaphysical necessity." Arash Abizadeh, "Does Collective Identity Presuppose an Other? On the Alleged Incoherence of Global Solidarity," *The American Political Science Review* 99, no. 1 (2005): 45–60, 59.

to say "the mad cannot participate," as if we were confronted with a conceptual limit, and the more careful judgment that mad cannot participate for contingent, empirical reasons. The former reifies the socially generated dynamics that, by reference to ideal and actually existing alternatives, it is the task of political theory and social science to question.[84]

Disabusing ourselves of such reifications allows us to better understand under what conditions children can be included in governance, the mad can deliberate, and criminals can participate in civic life. By relaxing the connection between competence and self-government, we can look to the potentially virtuous interaction of values, organizational politics, and knowledge of human capability. In the chapters that follow, my alternative approach is developed through a series of extended case studies, interspersed with critical engagements with an eclectic group of social and political thinkers. I show how prisons, no less than New England town halls, are sites where novel democratic and legal forms can emerge.

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84. This point is indebted to critiques of 'political ontology.' See Glenn David Mackin, *The Politics of Social Welfare in America* (New York: Cambridge University Press, 2013); Abizadeh, "Does Collective Identity Presuppose an Other? On the Alleged Incoherence of Global Solidarity"; Patchen Markell, *Bound by Recognition* (Princeton: Princeton University Press, 2003).

CHAPTER 3

ON PRISON DEMOCRACY

Walpole

At approximately 10 a.m. on March 14, 1973, a volunteer civilian observer noted that high-ranking officials from the prison officer union were gathering at the entrance of the Massachusetts Correctional Institution at Walpole (MCI-Walpole), a maximum security prison about 15 miles outside of Boston.[1] Rumors had been circulating for days within the prison that the officers were going to strike.[2] A few hours later, the entire day-shift of prison officers called in sick. Rev. Ed Rodman, the head of civilian observer program, remembers:

> That morning, I had set up a table after the first shift of observers went in. We let the second shift in at three and I was sitting at the table. One of the guards came up to me with a big manila envelope. He dropped it on the desk with a big clunk, saying, "I think these belong to you." In the envelope was every key to the prison.[3]

The inmates were now running the asylum, so to speak.

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1. I follow Kelsey Kauffman, *Prison Officers and Their World* (Cambridge: Harvard University Press, 1985) in using the term "prison officer" instead of guard or corrections officer. "My use of the term 'prison officer' reflects my orientation toward those I studied and their role within prisons. 'Guard' is too suggestive of a static relationship, something one does with inanimate objects. In any case its connotations are derogatory and belittling. 'Correction officer' conveys a fanciful (and, to my mind, unseemly) notion of the relationship between keeper and kept. 'Prison officer' simply denotes an individual granted official authority within the respective domain of a penal institution."

2. Observer Program Files, 15 Mar, Shift 1 [726]. Hereafter cited as OPF. I quote extensively from the files in the footnotes and text so readers can get a sense of the evidence used to support my descriptions and inferences.

3. Quoted in Jamie Bissonette, *When the Prisoners Ran Walpole: A True Story in the Movement for Prison Abolition* (Cambridge: South End Press, 2008). After being given the keys, Rodman immediately passed them over to the state police.

At the time, Walpole was the most violent prison in Massachusetts, perhaps even the most violent in the country.[4] Murders were frequent, stabbings even more so. In the week leading up to the strike, observers noted again and again how both inmates and officers lived under psychologically straining conditions of fear and uncertainty. Compounding matters, the physical conditions inside the prison were intolerable: as a result of both protest and neglect, many cell blocks were ankle-deep in trash and corridor walls were stained by feces and urine.[5]

That afternoon, Commissioner Boone declared a state of emergency.[6] The state police were sent outside the prison. The prison officer union was in a protracted dispute with the Department of Corrections,[7] headed by the recently appointed Commissioner John O. Boone. The union hoped the mass sick-out and ensuing breakdown of security would draw negative media publicity to the Boone administration's policies.[8] Boone, conversely, saw the strike as an opportunity to break the prison officer union which he saw as standing in the way of implementing large-scale prison reform in Massachusetts.[9] Boone took a risk. Instead of sending in the state police he turned over the management of the prison to the newly formed and elected prisoners' union (the Walpole chapter of the National Prisoner Reform

4. See Kauffman, *Prison Officers and Their World*.

5. OPF, 10 Mar, Shift 2.

6. Jerry Taylor, "Boone Declares Emergency at Walpole as Strike Looms," *The Boston Globe*, March 15, 1973, 1.

7. Prison officers were represented by separate locals of the American Federation of State, County, and Municipal Employees (AFSCME, AFL-CIO) and representatives of the locals met monthly in the Penal Committee of Council 41. Philip Heymann et al., "Massachusetts Department of Correction: Strategy, Structure, and Executive Manpower" (Harvard Kennedy School: Case Studies in Public Policy; Management, 1977).

8. John Carver, "Boone Being Undermined," *The Boston Globe*, March 17, 1973, 8.

9. Heymann et al., "Massachusetts Department of Correction."

Association, the N.P.R.A.), a skeleton crew of officers and trainees from other institutions, and civilian observers.

Between March 15 and May 19, the N.P.R.A. was the central force governing the inmates at Walpole. There were no murders and little violence,[10] the prisoners ran the kitchen and foundry, maintained security, deliberated over policy and action, and negotiated with the prison administration. During this time civilian observers were continuously present in the institution, logging over 10,000 hours[11] inside Walpole. These volunteers informally interviewed inmates and recorded the various events that took place. The hand-written notes of the observers are not easily accessible, and no academic attention has yet been paid to them.[12] One observer described the process of interpreting his own experience within the prison as "trying to drink from fire hose," and that description also aptly characterizes my experience reading through the observers' notes. The observer files contain historical fragments in raw form: torn scraps of paper, sometimes dated, sometimes not; typewritten drafts of reports authored by the Ad Hoc Committee; observer program rosters, recruitment fliers, and draft press releases; and a host of other documents, many of which are annotated, left by the N.P.R.A. during the 1970s. Scattered among a dozen musty filing boxes in a closet in Cambridge, Massachusetts is a hastily created archive of a prison reform movement in full swing.

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10. See Heymann et al., "Massachusetts Department of Correction."

11. The estimate in the official report of the observer program was 4,600 hours between March 8 and 25. See p. 126 of "Comments of Observers Present at MCI Walpole, March 8 - Mar 25, 1973." Participation in the program was not constant between March and May; participation was heaviest in the initial weeks of the program. 10,000 hours is a conservative extrapolation.

12. The only work that makes any reference to the files is Bissonette, *When the Prisoners Ran Walpole*. Howard Zinn describes his personal experience as an observer in Howard Zinn, *Justice in Everyday Life* (Boston: South End Press, 2002 [1974]). Bissonette's book, coauthored by former N.P.R.A. members Robert Dellelo and Ralph Hamm, provided the initial inspiration to examine the observer files.

The historiography that exists on Walpole, while both limited and controversial, is embroiled in a philosophical conflict over what it means in a democracy for a group to become an object of care or custody. For some, the events at Walpole are exemplars of Hobbesian anarchy and bureaucratic failure.[13] This account usually takes one of two forms, either a call to increase law and order within prisons or a push to reallocate goods and services to the task of treatment. In a word, inmate participation is understood as a symptom of a failed treatment or control regimen. Call this the conventional *liberal narrative*. However, an alternative account emerges from a close reading of the Walpole episode. In this narrative Walpole is an experiment in participatory democracy and community control.[14] Call this less familiar view the *radical narrative*.[15]

What are we to make of these two narratives? The present essay offers some answers, drawing upon the archival documents and oral histories left by the inmates, observers, and staff at Walpole. Unlike its liberal counterpart, the radical narrative was never systematically enunciated. However, as I'll detail below, its central principles can be reconstructed from a close reading of the tumultuous events of that spring in 1973. The final pages forward the claim that the radical narrative offers a promising alternative account of the relationship

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13. For instance, see Leo Carroll, *Lawful Order: A Case Study of Correctional Crisis and Reform* (New York: Garland Publishing, 1999), or, for a classic, see John J. DiIulio, *Governing Prisons: A Comparative Study of Correctional Management* (New York, N.Y.: The Free Press, 1987).

14. For instance, see Zinn, *Justice in Everyday Life*, J. E. Baker, "Inmate Self-Government and the Right to Participate," *Correctional Institutions*, 1977, 320, or Bissonette, *When the Prisoners Ran Walpole*.

15. As with democratic theorists generally, most reformers can be arrayed on a spectrum, from liberal to radical, depending on their theoretical priors. David Miller, "Democracy's Domain," *Philosophy & Public Affairs* 37, no. 3 (2009): 201–28. Miller defines the two ends of the spectrum as 'R-Democrats' and 'L-Democrats.' For the former, the value of democracy is best understood instrumentally, in terms of the content of the decisions that will result from following democratic procedures; for the latter, "democracy is valued intrinsically, and the idea of collective self-determination stands at the heart of democratic theory" (205). This is not to deny, of course, the existence of various hybrid positions (like the radical narrative I describe in this essay).

between democracy and punishment.

Return of the Repressed

Prisons and reformers fit hand in glove. Each generation rediscovers the horrors of confinement anew, each generation has its own special set of circumstances that prick its conscience and spur it into action.[16] Our moment is no exception.[17] Disgust over deaths of Kalief Browder[18] and Sandra Bland, exposés on abuse inside major prisons like Rikers Island[19] and Angola, the damning description of the California prison system in the *Brown v. Plata* decision,[20] and increasing activism and attention to the churning of black and brown bodies through the prison system have incensed the public.

'Mass incarceration' is our defining circumstance, and our current common sense is something like the following: policing works and prisons don't.[21] The 'nothing works' claims of the mid-1970s were overblown; rehabilitation policies can have an impact, albeit limited, on recidivism and desistance.[22] The interactions between individuals and criminal justice

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16. See David J Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America* (New York: Walter de Gruyter, Inc., 2002 [1980]); David J. Rothman, "The State as Parent," in *Doing Good: The Limits of Benevolence*, ed. Willard Gaylin et al. (New York: Pantheon Books, 1978); and Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995 [1977]).

17. Here I'm speaking directly to circumstances in the United States, but many of these beliefs extend to other contexts.

18. Jennifer Gonnerman, "Before the Law," *The New Yorker*, October 6, 2014.

19. Dana Goldstein et al., "Inside Rikers Island, Through the Eyes of the People Who Live and Work There," *New York Magazine*, June 28, 2015.

20. See generally, Jonathan Simon, *Mass Incarceration on Trial: A Remarkable Court Decision and the Future of Prisons in America* (New York: The New Press, 2014).

21. See Franklin E Zimring, *The City That Became Safe: New York's Lessons for Urban Crime and Its Control* (Oxford University Press, 2012), for instance.

22. For example, Ann Chih Lin, *Reform in the Making: The Implementation of Social Policy in Prison* (Princeton, N.J.: Princeton University Press, 2000) and Mark Kleiman, *When Brute Force Fails: How to Have Less Crime and Less Punishment* (Princeton: Princeton University Press, 2009).

institutions (police, prisons, courts) constitute a kind of civic education, encouraging or discouraging active citizen participation.[23] And there is an increased confidence that careful "curriculum building" by the criminal justice bureaucracy can promote trust and legitimacy, factors that predict compliance with the criminal law.[24] With consecutive years of declining prison census figures, the decreased purchase of law and order politics, and increasing awareness of the financial and social costs of mass incarceration, there is a note of cautious optimism[25] among reformers to address democratic deficits created by both crime and the excesses of punishment.

The contemporary concern for democracy in the context of punishment is an instance of the return of the repressed. In criminology and sociology there is a modest, now defunct, line of scholarship on inmate participation from the 1970s and '80s.[26] Revisiting this literature,

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23. See generally Joe Soss, *Unwanted Claims: The Politics of Participation in the US Welfare System* (University of Michigan Press, 2002); Tom R. Tyler, *Why People Obey the Law* (Princeton, N.J.: Princeton University Press, 2006); Vesla Weaver and Amy Lerman, "Political Consequences of the Carceral State," *American Political Science Review* 104, no. 4 (2010): 817–33; Alan Gerber et al., "Can Incarcerated Felons Be (Re)integrated into the Political System? Results from a Field Experiment," *American Journal of Political Science*, forthcoming; Benjamin Justice and Tracey Meares, "How the Criminal Justice System Educates Citizens," *The Annals of the American Academy of Political and Social Science* 651, no. 1 (January 2014): 44–73; Kitty Calavita and Valerie Jenness, *Appealing to Justice: Prisoner Grievances, Rights, and Carceral Logic* (Oakland: University of California Press, 2014); and Amy E. Lerman and Vesla M. Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (Chicago: University of Chicago Press, 2014). Moreover, rehabilitation is framed as building or rebuilding citizens, new policing tactics are couched in the language of empowering communities and promoting legitimacy, and more attention is being given to the "people prisons make." See Dan M. Kahan and Tracey L. Meares, "The Coming Crisis of Criminal Procedure," *Georgetown Law Journal* 86 (1997): 1153–84; Steve Herbert, *Citizens, Cops, and Power: Recognizing the Limits of Community* (Chicago: University of Chicago Press, 2009); and Amy E. Lerman, "The People Prisons Make: Effects of Incarceration on Criminal Psychology," in *Do Prisons Make Us Safer?: The Benefits and Costs of the Prison Boom* (USA: Russell Sage Foundation, 2009), 151–76.

24. Andrew V. Papachristos, Tracey L. Meares, and Jeffrey Fagan, "Why Do Criminals Obey the Law? The Influence of Legitimacy and Social Networks on Active Gun Offenders," *Journal of Criminal Law and Criminology* 102, no. 2 (2012): 397–440.

25. Though, for many, this might be better described as a "cruel optimism." For a near exhaustive review of troubled state of the contemporary politics of prison reform, see Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton: Princeton University Press, 2015).

26. For example, see Clarence Schrag, "Leadership Among Prison Inmates," *American Sociological Review* 19, no. 1 (1954): 37–42; Elmer H Johnson, "Potential of Inmate Self-Government," *Criminology* 15, no. 2 (1977): 165–78; Baker, "Inmate Self-Government and the Right to Participate"; Robert Coulson, "Justice

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I suspect, can help us recover a part of our inherited collective unconscious. In response to the conclusions of the Attica Commission, activists, scholars, and policymakers[27] debated if and how to include inmates' voices in the management of prisons. An exemplary work in this vein is *Who Rules the Joint?: The Changing Political Culture of Maximum-Security Prisons in America*. In that text, sociologists Charles Stastny and Gabrielle Tyrnauer use a participatory management experiment at Walla Walla Penitentiary in the early 1970s to argue for the "detotalization" of prison culture. They cautiously embrace the unfulfilled promise of what they call "prison democracy," the idea that democratic processes are, in themselves, rehabilitative.[28]

The general response to Stastny and Tyrnauer was that inmate participation is an unsuccessful compromise position, neither satisfying liberals nor anti-prison activists. Liberal critics on the political right, as I'll discuss below, made the case that inmates are not a part of the *demos* and including them in institutional governance degrades both democracy and basic conditions of confinement. Critics on the left argued that participatory reform experiments fail to escape the continuing choice between conscience and convenience. To these

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Behind Bars: Time to Arbitrate," *American Bar Association Journal*, 1973, 612–15; John Irwin, *Prisons in Turmoil* (Boston: Little, Brown, 1980); Charles Stastny and Gabrielle Tyrnauer, *Who Rules the Joint?: The Changing Political Culture of Maximum-Security Prisons in America* (Lexington; Toronto: Lexington Books, 1982); and DiIulio, *Governing Prisons*. For more recent reviews of the topic, see Hans Toch, "Democratizing Prisons," *The Prison Journal* 74, no. 1 (1994): 62–72; Hans Toch, "Inmate Involvement in Prison Governance," *Fed. Probation* 59 (1995): 34–39; and Chad R Trulson and James W Marquart, "Who Rules the Joint Revisited: Organizational Change and the Importance of Prison Leadership," *IJPS* 6, no. 3 (2010): 71.

27. Sometimes figures were all three. Take John Irwin, author of *The Felon*, for example.

28. They write: "The [participatory] experiments of the past have generally been judged failures by administrators (except by those who initiated them). As we have seen, however, these historical reforms experiments have as often succumbed to external assault as internal contradictions. We cannot say conclusively whether 'democracy,' any more than other forms of remediation, can be rehabilitative. We can only observe that, like 'treatment' in general, it has yet to be fully tried" Stastny and Tyrnauer, *Who Rules the Joint?*, 212.

thinkers, participatory management at Norfolk,[29] Silverlake,[30] and Walla Walla[31] are testaments to the hubris of Enlightenment thinking, exemplars of misguided attempts at social engineering. Ultimately both viewed calls for prison democracy as naively utopian, replacing wishful thinking for hard-nosed political realities. And the liberal argument ultimately won the day.

This forgotten intellectual moment has an unrecognized double character. For one, the ambitions of the Progressive-era prison reformers were finally interred – so many dreams collapsed, so many democratic experiments cruelly refuted by history. For another, the iconoclasts that discredited the Progressive prison never articulated an alternative democratic vision, only a series of boundary conditions for state intervention. The response to inmate participation, ironically, only consolidated what some have come to call our "carceral imagination."[32] As a step towards thinking beyond our inherited categories, it behooves us to return to the politics of prison democracy. Enter Walpole.

March 15 to May 18, 1973

We want a prison community as cool as the street. We want a voice in our prison

"society." Treat us like men and we'll act like men.[33]

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29. Howard B. Gill, "Brief Contributions: The Norfolk State Prison Colony at Massachusetts," *Am. Inst. Crim. L. & Criminology* 22 (1931): 107.

30. L. Empey and S. G. Lubeck, *The Silverlake Experiment: Testing Delinquency Theory and Community Interaction* (Chicago: Aldine, 1971).

31. Stastny and Tyrnauer, *Who Rules the Joint?*

32. See Bernard E. Harcourt, "Carceral Imaginations," *Carceral Notebooks* 1 (2005): 3–19, "We have certain moral desires – visions of a moral order, yearnings for the comportment of others and ourselves – and we seek to impose those moral desires on the world in whatever idiom we believe to be the most persuasive" (10).

33. OPF, Mar 17, Shift 2 [925].

You've got to have rules and you're not dealing with rational people. These are

men who have usually been unable to accept the word "NO." I tell an inmate to do

something and he tells me "fuck you!" I write a disciplinary report on him, but

there's no administration response. There is a total breakdown in order here.[34]

By March 16, the day after the strike, the media coverage was constant and its pitch shrill. Newscasts reported that Walpole was in chaos and that "drunk" and "drug-addled" inmates were roaming around the prison. The observers inside the prison, however, tell a different story. In a series of words: "calm," "relaxed," "joy."[35] This is in contrast to observer reports from the previous week of high tensions, and repeated impressions that "the place could blow" at any time. Almost every observer present that day noted high levels of unity among the inmates. "The atmosphere in the prison was almost that of a Roman holiday. Much bustling back and forth, noisy talking and good humored jostling. All the cell block doors were open and the men roamed about freely in the hall."[36]

There was an outpouring of political talk inside in the prison, particularly during those first few weeks after the strike. Both inmates and observers felt like they were witnessing history in the making.[37] Some, like the infamous Albert DeSalvo,[38] focused on the potential power of the prisoners' union: "they don't know what we've got here. Rhode Island's

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34. OPF, Mar 28, Shift 3 [2481].

35. OPF, Mar 16, Shifts 1-3.

36. OPF, Mar 16, Shift 1 [919].

37. Consider the following excerpt: "The place currently is like no other joint in the world (as one young social worker serving as an interim guard put it, "this is much more important that Woodstock.") what's happening here is true behavior modification. The prisoner's image of himself is changing radically." OPF, March 18, Shift 3 [1096]. Another: "Several claimed that the 'eyes of the country' were on Walpole, and that the inmates were determined to 'pull it off' successfully." OPF, March 18, Shift 3 [1215].

38. DeSalvo was more widely known at the time as "the Boston Strangler."

prisons are unionized; we're unionized; Norfolk. . . Concord. . . Vermont. We'll be able to call a national prison strike."[39] A few turned to discussions of class and race, noting that most of the inmates at Walpole were poor or had a working class background,[40] that a large number of inmates were black, and that "richer people would get off for what they did [. . .] most of the men admitted that they were guilty of the crimes and deserved to be punished, but the fact that others consistently got off [. . .] built a strong resentment in them."[41] And others focused on the potential of the union to push for smaller remedies within the prison, from fixing the heating system to providing basic vocational training:

> The NPRA is fighting with the administration. But I'm fighting another battle. I see that yard out there. It's being used for nothing. They could just put a single story building there, away from the fence, and how many fucking classrooms could they put there? We're not asking for any silver platter, or ladder to get out of here. Give me the tools and I'll work and compete in the society I'm supposed to live in. I'll build my own ladder.[42]

Over time the torrent of conversation did slow, but it never stopped.[43]

The civilian observers recorded hundreds upon hundreds of inmate ideas, suggestions,

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39. OPF, Mar 22, Shift 1 [1664]. Unfortunately, the prisoner unionization movement during the 1970s is largely ignored in scholarship on prisons. For a recent treatment, see Donald Tibbs, *From Black Power to Prison Power: The Making of Jones V North Carolina* (New York: Pelgrave, 2012).

40. This was not just a perception, prison census figures back this claim up: 73.9 percent of inmates at Walpole did not make it to the 12th grade. Joseph Higgins, "A Description of the Residents of Massachusetts Correctional Institutions on January 1, 1973" (Massachusetts Department of Corrections, August 1973).

41. OPF, Apr 4, Shift 2 [3091].

42. OPF, Mar 25, Shift 3 [2170]

43. After a month, increasing one finds references to inmates being tired of talking to observers. From an interview in the *Boston Globe*: "The novelty has worn off," said a long-term inmate who requested anonymity. "It's getting boring, Wednesday night, all the guys in my block were asleep at nine o'clock. You could hear a pin drop."

and comments concerning prison reform, both at Walpole and beyond. Perusing the notes of the observers, one is struck not only by the creativity of many of the proposed reforms,[44] but also the sheer number of ideas.[45] Inmates cared. The simple possibility of having a seat at the bargaining table, by some accounts, was a motor for inmate deliberation and expression.[46]

Beyond the initial euphoria of having control of the prison and the outpouring of conversation, the observers noted a deeper level of unity ("unprecedented solidarity,"[47] "a truly remarkable esprit de corps,"[48] a "pride in con-unity"[49]) among the inmates. Observers noted that inmates were not just united because of a mutual hatred of the "screws" (slang for regular prison officers),[50] but also because of a widely held sense of shared political purpose. In a speech given to the general inmate population a day after the prison officer walk out, N.P.R.A. external board member Obalaji Rust "firmly spoke informing the inmates of the

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44. One suggestion that was never realized, for instance, was a prison canteen where profits would be used to fund an area halfway house.

45. Many, many observer reports are dominated by long numbered lists of inmates' ideas for various reforms.

46. The presence of observers inside the prison, of course, shaped what was said and how it was said. For one, having members of the community on hand – young and old, and from various walks of life – that were willing and eager to listen offered encouragement and validation to inmate political expression. For another, civilian observers produced classic "observer effects"; both inmates and guards tried to play to their audience. Michael Ignatieff, who during this time was working on his dissertation research that would eventually culminate in *A Just Measure of Pain*, noted in one of his reports moments of "rather unreal politeness and cooperation between inmates and guards, unreal because neither side conceals for long its real contempt for each other [. . .] both sides play a sort of subtle charade for the benefit of the observers." OPF, Mar 30 [2686]. Third, as one observer rightly points out, "a process of self-selection impacts the informational value of conversations held between an observer and inmates." That is, observer and inmate interactions are not random. Prisoners and observers choose with whom they will talk.

47. OPF, Mar 16, Shift 3 [889].

48. OPF, Mar 18, Shift 3 [1215].

49. OPF, Mar 16, Shift 3 [907].

50. In particular, hostility toward the policies of the previous Superintendent of Walpole, Raymond Porelle, was a key galvanizing force for the inmates. In one inmate's words, "Porelle came in like Wyatt Erp and left the place shaking like a motherfucker." OPF, Mar 18, Shift 2 [1227].

one thing they all had in common: They were all[,] all of them[,] Black, White, or Puerto Rican[,] oppressed and that the guards were also oppressed. But the only way the inmates can aid in bringing about prison reform is by getting their shit together. Any differences they may have among each other would have to be overlooked, because only by sticking together could they come out on top. Otherwise, they'd go down the drain."[51] Rust received a standing ovation from the inmates both when he entered the assembly hall and when he left.[52] The inmates were under no illusion that this period of self-rule would last. Most expected self-rule to end in violence; references to the Attica rebellion two years earlier are peppered throughout the observer reports.[53] Inmates believed that their fates were linked.

On individual cellblocks this cohesion took a variety of forms. Murders, stabbings, and sexual violence stopped, membership in the various N.P.R.A. committees ballooned, and, as mentioned above, observers captured in their notes a flood of fragments of everyday conversations about local politics. Inmates engaged in various protest behavior, from work stoppages,[54] to hunger strikes,[55] to collective resistance to "behavioral modification" tactics

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51. OPF, Mar 17, Shift 2 [1061].

52. This exhortation to unity was not an exception; a week later an observer jotted down the following:

> NPRA meeting in auditorium – 400-500 inmates – theme was "we all stick together, black and white, stay cool, cause no incidents, show the world we can control ourselves and we will get concessions [...] Don't let the 'games' the guards play upset anybody – stay cool all the time. We can control ourselves, by ourselves." OPF, Mar 23, Shift 2 [1832].

53. A few examples: "Several also stated flatly that if the state police where brought in here there would be bloodshed. Perhaps another Attica." OPF, Mar 18, Shift 2 [1183]. "More than a few fully expected another Attica." OPF, Apr 5, Shift 2 [3197]. "It'll make Attica look like a picnic." OPF, May 5, Shift 3 [4740].

54. "Rap with internal board of NPRA – admin propose that the inmates go to work the next day. After much discussion and a vote by the block captain (13-13) the proposal was taken to the inmate population. They after 45 min voted to go back to work for one week provided negotiations continue in good faith." OPF, Mar 8, Shift 3 [1167].

55. "Inmates in the P.C. [protective custody] corridor told me that senior officer [JL] has been on duty in 10 Block they day shift (7-3) since Tuesday, even though he has been banned from inmate contact by Boone,

on the disciplinary blocks.[56] And organizations like B.A.N.T.U. (Black African Nations Toward Unity) and the Muslim Brotherhood were integral to political consciousness-raising among black inmates.[57]

This solidarity persisted for over two months; from March 15, the day of the officer walkout, to May 19, the day the state police took control of Walpole, general group cohesion was maintained among the approximately 560 inmates at Walpole.[58] And it is this solidarity that inmates, observers, and trainee cadets credit as a condition of possibility for N.P.R.A. governance. It's important to note that this solidarity was not a logical outcome of the prison environment; quite the opposite, the observer reports highlight a series of splits that had to be mended, or at least papered over, to make unity possible.

For one, the post-racial vision of collective resistance so eloquently articulated by Obalaji Rust (described above) downplays the significance of racial politics at Walpole after the walkout. Observers recorded, for example, that inmates largely self-segregated during chow by ethnicity and that the vast majority of recreational activities were uni-racial.[59] Additionally, the freedom to move between cells on each block resulted in racially homogeneous

the NPRA, and the prison administration. They have not been eating any meals since Wednesday." OPF, May 5, Shift 2 [4727].

56. "He spoke particularly of his experience on block 9 where people on phase 1 refused to accept any privilege or move to phase 2 unless everyone on phase 1 was granted the privilege." OPF, Apr 10, Shift 3 [3575].

57. "I attended a BANTU meeting (Black American [African] Nation To [Towards] Unity) held in the visiting room. [...] The organization is concerned with helping themselves within and without the institution necessary to rehabilitation. [...] The meeting dealt with areas of low education, medicine, medical psychiatric services etc." OPF, Apr 11, Shift 2 [3630].

58. There are a continuous stream of reports of high morale and togetherness among the inmates between March and May, including the weeks immediately preceding the lockdown. For example, "The prisoners still continue to relate very well to each other and all seem very responsive to the cadet guards and observers." OPF, May 2, Shift 2 [4590].

59. "One white prisoner remarked during a softball game that too much racial separation exists here and prejudice can be observed even on the ball field. One team was made up of all blacks, the other was all white[,] except one." OPF, Apr 30, Shift 2 [4487].

enclaves within the prison.[60] However, even if claims of cross-racial solidarity among the inmates were exaggerated, or aspirational, given the context even a minimal level of cooperation is difficult to fathom. For one, the vast majority of prisoners at MCI-Walpole came from the Boston area,[61] and the streets of Boston during the early 1970s were entangled in gang politics between the Irish and Italian mob.[62] While this did not entail open conflict inside the prison,[63] it meant that, as with neighborhoods on the outside, the prison community was largely divided into groups with discrete spheres of influence.[64]

Furthermore, racial tensions in the city of Boston were high – just one year after the Walpole strike Boston would be mired in open conflict over compulsory busing aimed at desegregating the schools of Massachusetts.[65] Prisons are embedded in a wider community, and shifts in that wider community play out in the prison in complex ways.[66] The New York State Special Commission on Attica described the relationship as follows:

> For the black inmate in Attica, the atmosphere on September 8, 1971, was not
> unlike that in the cities before the holocausts of Harlem, Watts, Newark, and
> Detroit. Sit-ins, demonstrations, and petitions had been met with excuses, de-

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60. OPF, Mar 27, Shift 2 [2366].

61. See Higgins, "A Description of the Residents of Massachusetts Correctional Institutions on January 1, 1973.

62. Also, this is after a decade of internecine Irish mob conflicts, and rising strength of Italian mob in Boston. The gang network of "Whitey" Bulger was particularly influential. See generally Dick Lehr and Gerard O'Neill, *Black Mass: The Irish Mob, the Boston FBI, and a Devil's Deal* (Oxford, UK: PublicAffairs, 2000).

63. "Talk about bitter Italian-Irish conflict, Mafia, is now outdated." OPF, Mar 16, Shift 3 [880].

64. Conversation with Robert Dellelo, Feb. 2013.

65. Ronald Formisano, *Boston Against Busing: Race, Class, and Ethnicity in the 1960s and 1970s* (Chapel Hill: University of North Carolina Press, 2004).

66. See Donald Clemmer's masterwork, *The Prison Community*, for more on this point. Donald Clemmer, *The Prison Community* (Boston: Christopher Publishing House, 1940).

lays, and repression. Organized, peaceful efforts had been rebuffed or ignored.

Inmates and guards alike later commented, "The tension was so thick around

here you could cut it with a knife." No organizers were necessary; no plans were

required; no leaders needed. As in the cities in 1967, the situation itself was

explosive. All that was needed was a spark to set it off.[67]

Drawing on the arguments of the Attica Commission, a group of public policy researchers

make the point that wider social conflicts likely played a significant role in undermining

traditional inmate-staff relations at Walpole prison.[68]

The tension between racism and solidarity at Walpole is nicely evinced in the following

vignette provided by one observer's notes:

In my block (5) there was a white guy who during the course of a conversation

said to a black man, "Go do this for me, we brought you over to be slaves anyway."

A very dangerous thing to say, so I thought. Later on, [...] [a man in the next

cell over] pleaded with me to listen carefully to what he was saying [...]: "Sure,

they (we, everyone probably) are racist and prejudiced, and when the cons can't

get over that they play games. But these men are brothers underneath all that.

Brothers in a deeper sense than most people ever experience, because their love

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67. *Attica: The Official Report of the New York State Special Commission on Attica* (New York: Bantam Books, 1972), 141.

68. While their analysis is not particularly convincing on this point, Heymann et al., "Massachusetts Department of Correction. is illustrative: "This increasing militancy affected traditional inmate social organization and attitudes. First the new political approach contradicted the maxim, 'do your own time,' to which 'right guys' subscribed and which the correctional staff itself admonished prisoners to follow. Second, the militant politicized prisoner tended to assume the role of 'gorilla,' the aggressive inmate who uses violence. Third, Such a prisoner would tend to refuse to cooperate with correctional staff in the traditional network of unofficial contacts and relationships. Taken together, the trends demonstrated a shift in power way from 'right guys' and the 'thief' subculture toward the 'gorillas' and a general erosion of the traditional system of social control" (14).

for each other is constantly being tested."[69]

Racially charged language was hardly exceptional; the observers captured both moments of cross-racial cooperation and fragments of racial anxiety.

Yet despite these fissures and frictions the inmates stood together in the spring of 1973. But what did self-rule look like? First, consider the formal structure. The internal board of the N.P.R.A., the leaders of the inmate union, consisted of 21 seats. The seats were divided by race: "nine Whites, nine Blacks, and three Spanish."[70] The individuals that filled each seat were selected[71] by their own ethnic or racial group, and were, by various accounts, the notables within the institution. In each cell block there was an elected block representative or "block captain" that was responsible for managing any issues that arose on the block. In addition, there were thirty-some committees, overseen by the internal board, which managed particular features of prison life: a kitchen committee, an education committee, a black problems committee, and a hospital committee, among a slew of others. Any committee could call a general assembly of the prisoner population for deliberation and a vote, and attendance at these assemblies would range between 50 and 500 inmates.

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69. OPF, Mar 18, Shift 3 [1179]. Also, "One black prisoner informed me that he felt that racial bias was in evidence. He felt that blacks were left out of certain programs." OPF, Apr 7, Shift 3 [3412].

70. John McGrath, a member of the N.P.R.A. internal board, is quoted in Bissonette, *When the Prisoners Ran Walpole*: "At first, the discussion revolved around representation of Black prisoners on the board. I advocated for a twenty-seven-member board-nine Black, nine white, and nine Spanish. I kept getting overruled because the white prisoners were afraid that the Blacks and Spanish would unite and overrule them. Eventually, the Spanish guys said they only wanted three representatives because of the small number of Spanish guys in the prison. So the board had twenty-one members-nine Black, nine white, and three Spanish. The guys agreed they would vote from their hearts as men not because of their skin color. And it worked, too. But I really think if I hadn't been so stubborn, it might have fallen apart because the NPRA had to be about equality not about equal opportunity. That didn't work on the street and it sure wasn't going to work inside" (86).

71. On the initial election of the N.P.R.A. board, one observer writes, "I talked to an inmate who said one of the reps asked him about NPRA and was it a viable force; the inmate said yes. Then the rep asked if it was a democratic election. The inmate said yes – as democratic as possible." OPF, Apr 11, Shift 2 [3607].

The mood of wider deliberative assemblies ranged from sedate to cantankerous, but were largely civil. If an inmate was intoxicated or threatened another inmate, he was told to leave. Everyone that wanted time to speak on an issue was granted it, and decisions were ultimately reached via a voice vote or a public show of hands.[72] The assemblies were used to bring major issues to inmate population; the vast majority of day-to-day business was conducted within committees or by the internal board.

The formal structure of N.P.R.A. governance was the child of a negotiated truce among various factions at the beginning of the prison officer strike. One observer wrote, "Several inmates told me that there are many inmate conflicts that are being put aside during this crisis – and that when the crisis ends, there will be more stabbings, beatings, and murders."[73] Robert Dellelo remembers:

> The racial tension in the prison was thick. Black Power was bouncing. What happened is I said, "There is only one color and that is blue." The guards wore khaki, which was brown the prisoners were wearing blue. It was blue versus brown. "You are either blue or brown. There is no in-between ground. We are all in this together." ... I explained to everyone, "We can't have no more beefs for six months. We have to agree no beefs. Everyone backs off." The question was, "What if someone nails someone during that truce, what happens?" My answer was, "Anyone who violates the truce, we will take him down." And they knew I would and could. We had the hard core on call, so even if I couldn't take someone down myself, I had someone to do it. That made a lot of people feel

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72. Conversation with Robert Dellelo, Feb. 2013.

73. OPF, Mar 18, Shift 2 [1183].

very, very safe. The guards could not work us like before. If we refused to fight each other, they lost a lot of their power. There was a peace across the prison that never was there before.[74]

This negotiated truce created a credible alternative to the existing social order. Beyond a guarantee of security, each ethnic group had to ensure that they kept "their house clean" – that is, that they would refuse to allow "stoolees" (as in stool pigeons, informers) and "molesters" (sex offenses involving children) into their ranks.[75] The truce was a re-imagining of, but not a departure from, the basic tenets of the convict code.[76]

The norms around this truce, however, did not uniformly prohibit violence. If two people had a conflict, and both parties were about equal size, then it was fine that they square off – "the word was that if there was to be a showdown between him and the one he allegedly stabbed that it would be 'one on one' and if anyone entered in to it that the one who interfered would get it [...] The population would enforce this."[77] After the fight, the two should "shake hands, smoke a joint, and move on." The idea was to contain conflict, to

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74. Quoted in Bissonette, *When the Prisoners Ran Walpole*, 78. See also Peter Remick and James B. Shuman, *In Constant Fear: The Brutal True Story of Life Within the Walls of the Notorious Walpole State Prison* (USA: Reader's Digest Press, 1975): "Shortly after the walkout, the NPRA sent out the following verbal message: If an inmate kills an officer or anyone else during the walkout, we've lost and we'll kill that inmate. If an inmate knifes a guard or anyone else during the walkout, that inmate will be knifed. We have too much to lose. We're not playing little kiddy games anymore. We got one hell of a lot to lose" (106).

75. Conversation with Robert Dellelo, Feb. 2013. On sex offenders, "Feels strongly that you cannot mix all kinds of offenders within one prison. Told me of how some inmates beat up another because he was a sex offender." OPF, Apr 20, Shift 3 [4106].

76. A central inertial force moving against unity was the hegemony of the so-called "convict code" in the inmate population. With maxims that include "do your own time" and "don't snitch," and stay away from "lowriders" – those convicts engaged in interpersonal disputes – the convict code doesn't exactly lend itself to collective action. See John Irwin, *The Felon* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1970), 69. The backbone of the convict code is a logic of social order; while atomistic, it provides a means to resolve disputes, assign status, and maintain dignity in a difficult and uncertain environment. As I'll describe in more detail below, the convict code was revised, but not abandoned in the new social order established after the walkout.

77. OPF, May 4, Shift 1 [4701].

prevent small fires from turning into blazes.

Most minor incidents, like petty theft, were addressed by appeals to solidarity, mixed with embarrassing the rule-breaker in front of his peers on the block: "we educated the cons into not ripping off their brothers, because we are ripped off by the system [. . .] if a con rips off another con for his personal belongings he becomes what the system is, he becomes a pig, and so we educate the cons into not becoming pigs."[78] However, calls to solidarity were also backed up, if need be, with harsher discipline: "Prisoner who had been transferred from Norfolk because of his petty stealing, started stealing things from inmates at Walpole (towels, food, etc.). Last night a group of inmates caught him in the gym and beat him up. Wanted to teach him a lesson." Similarly, an inmate on the hospital committee suspected of stealing medicine was booted from his position and ended up with a black eye.[79] Other examples are scattered throughout various observer reports.[80]

The N.P.R.A. formed a Tactical Committee,[81] headed by Ralph Hamm and Larry Rooney, which shouldered the herculean task of maintaining order in the prison.[82] Remember, once again, that despite an inmate population that had significant access to weapons,[83] no stabbings or murders took place during those two months. One incident recorded by two observers is particularly illustrative of how a small conflict can snowball. After a fight between three

78. See the documentary *Three Thousand Years and Life* directed by Stephen Ujlaki.

79. OPF, May 1, Shift 1 [4537].

80. "I noticed that at least 6 persons had Black Eyes, A swollen jaw or cuts on the forehead." OPF, Apr 15, Shift 1 [3823].

81. "A rep. of the N.P.R.A. (Jerry Sousa) has told us of a tactical patrol by N.P.R.A. to prevent and/or intervene should there be any incidents in halls or blocks." OPF, Mar 27, Shift 1 [2360].

82. See Ralph Hamm quoted in Bissonette, *When the Prisoners Ran Walpole*, 143-145.

83. "Brief trip with [PB] to min avocation area. Several inmates in corridor called out 'cop[,]' moved into Jewelry room. Inmate at grinding wheel was grinding what appeared to be a knife. I did not enter but continued through corridor to Leather, then out. Grinding continued." OPF, Apr 26, Shift 1 [4354].

men, two black inmates and one white,

> A white man came down [...]. He mingled with the blacks. Talk was alternately accusing and indifferent. Place nearly full now. Eventually someone hit someone and the white and a black faced off. Almost immediately both drew large, heavy machete-type knives. This made it hard for the others (who displayed no like weapons) to come between them. I and [F] moved outside the door. They were going to cut each other's heads off. Much movement inside. Somehow the fight was averted. It seemed to me that at the end the white group just walked away. About 100-300 must have been there.[84]

Talking with inmates the next day, another observer reported that the initial incident, the conflict among the three men, was understood to be "a personal beef and not any type of racial outbreak." While incidents like this are exceptional in the observer files, moments like the one just cited reveal an important general point. Simple deterrence was not enough to guarantee security – order at Walpole required both an ability and a *desire* to deescalate conflict among the major factions within the prison.[85]

In all, the scope of governance touched almost all facets of prison life during this time – distribution of medicine, dispute resolution, recreation, outside visitors, food distribution, even the daily block counts. Creating a credible social order also bought the N.P.R.A. leverage in negotiations with the prison administration, and made the call for inmate unionization credible. On May 18, the acting superintendent of the prison, with Boone's blessing, decided

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84. OPF, May 3, Shift 2 [4643].

85. This cuts against the claim that a few inmates, the 'wrecking crew,' could hold the population in check through fear and brutality. See *Carlo v. Gunter*, Massachusetts 392 F. Supp. 871 (1975).

to bring in the state police and lockdown Walpole. Observers were expelled from the prison for a week, and when they were allowed to return they were only permitted selective access to the institution. On June 10, the observer program was disbanded.

"The inmates are running the prison"

The politics of participation at Walpole prison is probably not what democratic theorists would create in a vacuum.[86] As others have elaborated, the government of 'liberated spaces' can entail practices of discipline that some might find bizarre or distasteful.[87] The facts related to inmate self-rule shaped but did not determine how the Walpole episode was narrated. Consider this reflection by a civilian observer:

> Strange, what different meanings can attach to the phrase "the inmates are running the prison." A number of men said this to me in a quiet, un-defiant way, to indicate that they are assuming responsibility for some the routines [...] formerly carried out by guards. The inmates are in effect maintaining order. I imagine that what the guard was trying to convey to me by his reference to the "present situation" was that the inmates had taken over something vital that belonged to the guards.[88]

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86. One reviewer noted the peculiar resonance of the Walpole episode with Henry Fielding's fictionalized account of Jonathan Wild in his *Miscellanies*. In "The Life of Mr. Jonathan Wild the Great," Fielding uses the figure of the notorious thief Jonathan Wild to parody the recently disgraced prime minister Robert Walpole – the town of Walpole, Massachusetts's namesake. Chance linkages demonstrate a common theme: a 'Walpole' characterized by political corruption, decay, and "every kind of villainy" and counter-forces warring for the soul of democratic society.

87. In particular, I have in mind Bernard Harcourt's discussion of discipline within the Occupy Wall Street movement. See Bernard E. Harcourt, "Political Disobedience," *Critical Inquiry* 39, no. 2 (2012): 42ff.

88. OPF, 30 Mar, Shift 1 [2667].

Two dominant narratives were used to interpret the events at Walpole, what I described earlier as the liberal narrative and the radical narrative.[89]

The Liberal Narrative

The traditional narrative of prison reform is closely aligned with the second interpretation of the phrase "the inmates are running the prison" described by the above observer. For those primarily concerned with the distribution of goods, with providing "order, amenity, and service," inmate self-rule at Walpole was, at best, a haphazard attempt to muddle through in the face of maladroit management by the Massachusetts Department of Corrections.

A significant amount of the newspaper coverage of those turbulent months takes this reading, and elements of case study presented above surely can be shoehorned into this narrative. One *Boston Globe* journalist waxed this point using an officer's perspective: "Who runs Walpole? The inmates? 'I don't know who else is,' Officer Arthur Dunn said. 'They're getting tired of running the place. They have problems, medical problems, drug problems. They don't want to handle the junkies either.' "[90] The leader of the prison officer union cast the problems of inmate governance in more stark terms: "[McLaughlin] said the

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89. I use the term 'narrative' here with purpose. My ambition in the discussion below is less in formalizing a narrative sequence for the sake of inference than in making explicit the latent assumptions that underpin that narrative. The 'plot' of the Walpole episode, as narrated in the newspaper coverage and policy discussions reviewed above, is a particular application of a wider story about how punishment functions in a liberal-democratic regime. To tell a story about an event is, at least in part, to explain it. A narrative organizes an event in a chronological sequence and channels that sequence into a plot that has a beginning, a series of intervening events, and an end, usually with an aim to infer cause or interpret meaning. "Plot," according to Ricoeur, is "the intelligible whole that governs a succession of events in any story." Importantly, the narrative mode of comprehension is "configurational," it "puts its elements into a single, concrete complex of relations." See Paul Ricoeur, *Time and Narrative Volume 1*, ed. Kathleen McLaughlin and David Pellauer (Chicago: University of Chicago Press, 1984).

90. Jerry Taylor, "Walpole: The Prison Where There's Nothing to Do," *The Boston Globe*, April 16, 1973, 3.

'permissive policy' instituted by [State Secretary] Goldmark and [Commissioner] Boone has given control of the prisons to 'the scum of the inmate population.' He said he was not referring to the 98 percent of the inmates who 'are no problem. They want to do their time and go home.'"[91] From this perspective inmate self-governance was mob rule, in both senses of the term mob.[92]

The politicians and administrators that initially supported Commissioner Boone offered a similar diagnosis. The Walpole situation was about program implementation and bureaucratic politics, not political recognition. Boone's management style, his attempt to side-step (or step over) the concerns of prison officers, and a racially toxic institutional climate all but ensured conflict and disorder.[93] The fracas at Walpole was ultimately seen as a distraction to a wider correctional reform agenda.[94] Among these elites, officer and inmate strikes were viewed as a kind of growing pain, a symptom of a treatment regime in transition.

One of the clearest and most thoughtful expositions of this wider liberal narrative is John DiIulio's *Governing Prisons*.[95] Inspired by Alexis de Tocqueville and Gustave de Beaumont, DiIulio frames the central problem of prison reform as a problem of governance. He asks, "is it possible for prisons to be governed at an acceptable human and financial cost?" His answer, in brief, is yes, poor prison conditions are produced by observable and remediable defects in the way that prisons are organized and managed. Specifically, he argues "high-custody"

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91. Ray Richard, "Guards Call Conditions 'Intolerable'," *The Boston Globe*, March 15, 1973, 1.

92. The Irish and Italian mafias both had influence inside of the prison.

93. Heymann et al., "Massachusetts Department of Correction."

94. The Omnibus Prison Reform Act passed in 1972 involved implementing provisions such as a furlough system and the construction of community half-way houses.

95. DiIulio's text is particularly appropriate because the turmoil in Walpole prison in the late 70s and early 80s was one of the central motivations for his work.

(hierarchical, restrictive) forms of prison organization are most effective at stemming prison violence.

The frame of governance and governability in DiIulio's account is useful, and I find that the conceptual metaphor of "prison as a constitutional government"[96] is particularly revealing.[97] At a glance, one might think that a government with subjects that have little control over the conditions of their lives is more akin to an authoritarian regime than a constitutional democracy. For DiIulio, however, the reference public that holds administrators democratically accountable is *outside* the prison and, consequently, for him there is no democratic deficit created by paramilitary forms of prison management. Inmates simply are not part of the *demos*, of civilized society: "Given the lawless and uncivilized character of their citizens, inmate societies ought [...] to be subject to strong official controls and a tight, mandatory regime of work and programs."[98] From this interpretive perspective, it's unclear what response or recognition – as administrators, as members of public on the outside, or as inmates – befits a group exercising voice outside the "constitutional foundation" of the prison polis. While the evidence presented in the case study above is not dispositive, it seems clear that something like a "participatory culture"[99] emerged at Walpole during those early months

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96. See DiIulio, *Governing Prisons*: "If one is interested in improving the quality of prison life, the best way to think about the prison is not as a mini-society but as a mini-government" (235).

97. Tom Wicker in *A Time To Die* makes a similar note about the organization of inmates during the Attica rebellion: "When Schwartz and Eve arrived in D-yard about 3 P.M., they found a rough social and political order functioning, although six hours earlier all its inhabitants – alienated, angry men, may of them unschooled, violent, and admitted lawbreakers – had been prisoners of the state of New York, under constant surveillance, and reduced to little more than lockstep circumstances.", Tom Wicker, *A Time to Die* (Chicago: Haymarket Books, 2011 [1975])

98. DiIulio, *Governing Prisons*, 46.

99. A participatory culture is a culture with low barriers to expression, support for sharing expression, informal mentorship for knowledge transfer, and where members both believe their contributions matter and feel a connection to one another. Henry Jenkins, *Confronting the Challenges of Participatory Culture: Media Education for the 21st Century* (Cambridge: MIT Press, 2009).

of 1973. Deliberation and democratic decision-making were prominent features of inmate self-rule, and an election was even held. Thus, the claim that inmate unions like N.P.R.A. are a simple example of mob rule seems untenable. In DiIulio's vision of democracy, inmates become the "part that has no part"[100] of a prison political order "forged by revenge and cooled by mercy."[101]

The concepts of governance, exclusion, and democratic accountability that line DiIulio's account are revealing, but limited. A key difficulty is DiIulio's narrow vision of political governance. Consider three dimensions of governance. First, there is *governance*, the procedures for collectively deciding how to deploy labor and capital. This can be distinguished from the task of management, the actual work of deploying, or *governing*, that labor and capital. And the third dimension is the legal basis of the organization's *right to govern* the labor and capital within its jurisdiction.[102] DiIulio is primarily concerned with the second sense of governance, governance as management. But the prisoners at Walpole, in various voices, pushed for a right to self-determination on the other two dimensions as well – pushing for inclusion in the procedures that allocate goods in the prison and, in some cases, rejecting the legitimacy of custody itself.

Inmate participation, in DiIulio's account, shares important characteristics with what social theorists over the last decade have come to call *neoliberal penality*. Neoliberal penality refers to the idea that the state should assert its "responsibility, potency, and efficiency" in crime management while "proclaiming and organizing its own impotence on the economic

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100. See Jacques Rancière, *Disagreement: Politics and Philosophy* (Minneapolis: University of Minneasota Press, 1999).

101. DiIulio, *Governing Prisons*, 262.

102. David Ciepley, "Beyond Public and Private: Toward a Political Theory of the Corporation," *American Political Science Review* 107, no. 1 (2013): 141.

front."[103] This logic, according to Bernard Harcourt, is an unstated premise in contemporary discussions about prison policy, and, more controversially, acted as a "condition of possibility" for the rise of mass incarceration in the United States over the last four decades.[104] In *Governing Prisons* we see a parallel configuration, a civil society of freely contracting individuals and an authoritarian prison society composed of the unruly and unreasonable. Here, however, the lynchpin is not the "natural order" described by Harcourt that justifies laissez-faire economic policies; instead, it's a largely implicit democratic theory of custody, a theory built on the logic of democratic exclusion and reference publics.

My aim is not simply to suggest that Walpole exposes a tension between the real and the represented, though the observer files definitely suggest descriptive insufficiencies in the liberal narrative. Nor is my goal to draw out the friction between a particular narrative form and the enactment of that form, though the distance between the two certainly can tell us about our enduring identifications and affective attachments. Rather, my point is to highlight how the liberal narrative can, without contradiction, omit from discussion the forms of need and political exclusion human beings experience behind prison walls.

Unlike the liberal narrative, the radical narrative was never systematically articulated. However, as I'll describe below, its central principles can be reconstructed from the practices and observations of inmates, observers, and staff during the officer strike. In response to

103. Loïc J. D. Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009); Bernard E. Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* (Cambridge: Harvard University Press, 2011).

104. For critics of the relationship between neoliberalism and mass incarceration in the United States, see Michael C. Campbell and Heather Schoenfeld, "The Transformation of America's Penal Order: A Historicized Political Sociology of Punishment," *American Journal of Sociology* 118, no. 5 (2013): 1375–1423 and Nicola Lacey, "The SAGE Handbook of Punishment and Society," ed. Jonathan Simon and Richard Sparks (Los Angeles; London: SAGE Publications, 2013), 260–80.

liberal accounts,[105] radicals forwarded a particular vision of participatory democracy. And, as I argue in the concluding section, the lack of a systematic account of political foundations is actually part of what makes the radical vision promising for reevaluating the relationship between punishment and democracy.

Radical Narrative

Moving from the second interpretation of the phrase "the inmates are running the prison" to the first, inmate self-rule can also be understood as an affirmation of "citizens in a community taking responsibility for changing their own circumstances and achieving their own goals."[106] Members of the N.P.R.A. executive board capture this intuition:

> "We want to see Walpole changed so it's compatible with the street. A community prison with self-government, inmate participation and working conditions like on the street," said Robert Dellelo [. . .] "We've got to get guards and inmates together and see what we can live with."

> "We don't want to run the prison," said Robert Dussault, [. . .] NPRA treasurer and a convicted bank robber, "We just want a say in how it's run. This is our home."[107]

In other words, the street and the prison occupy the same political and moral space. A community is a community, whether or not its inhabitants are walled-in. And every group

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105. Again, I take liberal welfarist and liberal law and order claims to be rooted in a set of common assumptions about the shape of civil society's domain (even if there is disagreement about what citizens on the outside owe to inmates).

106. OPF, "Ad Hoc Committee on Prison Reform: Response to WBZ Editorial of March 16, 1973" [3324].

107. Jerry Taylor, "Full Collective Bargaining Rights Sought by Walpole Inmates," *The Boston Globe*, April 30, 1973, 4.

in a community deserves a say in how it's governed. Moreover, participation in prison life is a kind of political education. "Men who had not gone in as 'political' prisoners," Howard Zinn writes, "who had been what we call common criminals, began emerging rehabilitated. But not in the way the government talks of rehabilitation [...] ."[108]

While the particulars of the N.P.R.A.'s or Zinn's reflections certainly are not representative of all observers or inmates, the general spirit of their remarks is consistent with an emergent 'radical narrative' of the events at Walpole. In this narrative inmate self-governance is a form of applied civic education, where one develops a capacity for complex forms of participation by engaging in more basic participatory acts. At its extreme, this logic points to the possibility that higher-level participation may obviate the need for confinement at all, perhaps even providing a path to prison abolition.[109] At its heart, the radical view is an extension of participatory democratic theory to an unfamiliar and unlikely institution: a maximum security prison.

Carole Pateman's classic text *Participation and Democratic Theory* speaks to the both the novelty of the radical view and its debt to theorists of participatory democracy. Pateman's object of analysis, of course, is the factory, not the prison.[110] Yet, Pateman's analysis

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108. The full quotation is as follows: "Through the first months of 1973, citizens stayed inside Walpole for twenty-four hours a day, on three eight-hour shifts, to create a kindlier atmosphere, to try to make sure terrible things did not happen. At the heart of this process of change were the prisoners themselves, affected in some indescribable way these past years by the revolt at Attica, by the death of George Jackson, by the war in Vietnam, by the general rise of protest in the country. In this process, men, who had not gone in as 'political' prisoners, who had been what we call common criminals, began emerging rehabilitated. But not in the way the government talks of rehabilitation, not obsequiously taking their place in the accepted, legal criminal order of things. Rather as rebels and organizers, as thoughtful, militant men ready to devote their lives to abolishing prisons along with that complexity of conditions that makes prisons seem logical." Zinn, *Justice in Everyday Life*, 192.

109. "The goal of the prisoners' union project was two-fold: to exercise self-determination within the prison, and to demonstrate that the prison itself was unnecessary." Bissonette, *When the Prisoners Ran Walpole*, 89.

110. I don't mean to imply the analogy is implausible. Consider Melossi and Pavarini's classic text *The*

nicely tracks the vision of self-rule presented by many of the inmates and observers at Walpole. She writes: "Society can be seen as being composed of various political systems, the structure of authority of which has an important effect on the psychological qualities and attitudes of the individuals who interact within them; thus, for the operation of a democratic polity at a national level, the necessary qualities in individuals can only be developed through the democratization of authority structures in all political systems."[111] Observer descriptions of the consciousness raising efforts of B.A.N.T.U., the skills developed in various committees, and the political savvy born of the hum of constant political chatter in the inmate population all seem to comport with this approach. If one accepts the idea of the prison as a political system (or, in the words of DiIulio, "a constitutional government"), Pateman's advocacy for democracy in industry is in the same genus as the N.P.R.A.'s call for inmate self-rule. Furthermore, the similarity between the language used by Pateman and the inmates and observers at Walpole is striking, perhaps because each tapped into a key piece of the democratic zeitgeist of the late 1960s and early 1970s.

There are limits, however, to setting 'maximum participation' as a lodestar for the democratic reform of punishment. For one, an important lesson from Walpole is that participation is an instrument of management, a tool to achieve various political ends for oneself or for others.[112] Moreover, the observer files underscore that the 'exclusions' potentially remedied

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Prison and the Factory or the simple fact that inmates often work (cleaning, cooking, teaching) within the organizations that confine them.

111. Carole Pateman, *Participation and Democratic Theory* (Cambridge: Cambridge University Press, 1970), 35.

112. Before the strike, for example, the prison administration tried to revive an "inmate grievance council" to serve as a release valve for bubbling inmate dissatisfaction in the wake of Attica. There is a long and interesting history of the use of inmate councils at Walpole. See Baker, "Inmate Self-Government and the Right to Participate. for a brief overview. To use Pateman's terminology, this form of participation was "pseudo," participation in name only, where participants had little influence on distributive outcomes within

by increased participation can be internally complex. Take the negotiated truce between the various factions in the inmate population as an example. The truce, in essence, morphed the convict code and divisive racial politics into a foundation for a new political order nested within the existing prison order. However, the exhortation to "keep one's house clean" by purging 'snitches' and 'molesters' suggests democratic exclusions have a fractal or recursive character. That is, a given exclusion has the quirky feature that it is defined in terms of a simpler, smaller version of itself. Thinking about the pariah class of sex offenders in particular, other works emphasize that communities of sex offenders are also internally divided by status, with those that commit offenses involving children inhabiting the bottom rung. The excluded part of a political order may, itself, have exclusions that define that part's shape and structure.[113]

The observer files bring into relief another wrinkle for the classic view of participatory democracy. Theorists like Pateman offer a vision of 'self' built on a methodological individualist ontology.[114] That is, a world in which the "individual" is the basic building block of

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the prison. Similarly, however, the N.P.R.A. also used participation as a way to co-opt potentially fractious elements of the inmate population. While these individuals were full participants (they wielded actual authority), participation by would-be dissenters strategically served a series of ends external to themselves. In effect, they lost influence by becoming participants in the inmate regime. In Pateman's work full participation (in contrast to "pseudo" or "partial") comes across as an unadulterated good – but the events at Walpole suggest a more complicated story. Domination and democracy go hand-in-hand; maximal participation, perhaps counter-intuitively, can at times lend aid to domination. Skeptics on the political left argued a version of this point. They claimed, for example, that the prisoners' union was simply mutton dressed as lamb, little more that a traditional "lobbying group for reforms sought by the state itself." Bob Martin, "The Massachusetts Correctional System: Treatment as an Ideology," *Crime and Social Justice* 6 (1976): 49–57.

113. A particularly brutal example of these nested exclusions is inmate-on-inmate violence during the notorious 1980 New Mexico Prison Riot. "Seventeen of the 33 inmates killed were housed in Cell Block 3 and Cell Block 4. Twelve of these inmates were tortured with blow torches, set afire, and mutilated; one was beheaded with a shovel. The victims included suspected 'snitches,' a child rapist, and 'mentally disturbed' inmates whose screaming had kept other inmates in segregation awake at night." See Mark Colvin, "The 1980 New Mexico Prison Riot," *Social Problems* 29, no. 5 (1982), 458-9.

114. On methodological individualism, see Jon Elster, *Explaining Social Behavior: More Nuts and Bolts for the Social Sciences* (Cambridge; New York: Cambridge University Press, 2007). For criticism, see Andrew

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society, a social universe whose atoms are agents with capabilities[115] and preferences. Those working on this ontological register are tempted to write that various forces, whether intentional or accidental, conspired to realize a pre-existing capacity for participation within the inmate population at Walpole. Howard Zinn offers a compelling version of this perspective. However, this view produces two conceptual difficulties.

The first conceptual difficulty is the following: one cannot posit wards as autonomous agents when it is wards' autonomy, potential or actual, that is called into question in the liberal narrative. Extending participatory democratic theory to the prison results in question begging. Put in other words, the central problem is that the individualist, atomic conception of agents precludes investigation into the construction and emergence of the real people and organizations that we reference by the term 'agent.'[116] As an alternative, one might treat as fiction the idea that each of us collects and sheds attributes over a lifetime – ambition, depravity, intelligence, charity – while remaining at some base level "myself," my soul. Custodial institutions, to borrow a phrase from Erving Goffman, are "forcing houses for changing persons" and "each is a natural experiment on what can be done to the self."[117] Treating the 'self' in inmate "self-rule" as an outcome of a tangle of historical and organizational

Abbott, "Mechanisms and Relations," *Sociologica* 1, no. 2 (2007): 1–22. On ontology, see Patchen Markell, *Bound by Recognition* (Princeton: Princeton University Press, 2003): "For these authors, such efforts go wrong at the level of what we might call social and political 'ontology': they rest on distorted pictures of basic features of the human world, mistaking the irreducible conditions of social and political life for pathologies that might someday be overcome" (4).

115. For a contemporary example, see Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge: Harvard University Press, 2011).

116. See John F. Padgett and Walter W. Powell, *The Emergence of Organizations and Markets* (Princeton, N.J.: Princeton University Press, 2012), 3.

117. Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (New York: Random House, 1961).

processes[118] rather than as a latent feature of the political world opens up a line of inquiry where one would otherwise be elided or foreclosed.

The second conceptual tangle, related to the first, concerns the concept of capacity. A key asset of Pateman's view is its holism, its recognition that human abilities are formed intersubjectively and in interaction with one's world. It's clear that the N.P.R.A., for example, would not have been able to govern, and the inmate population would not have been governable, without a series of previous experiences of collective protest and the tireless consciousness-raising work of outside activists. However, this holism is paired with a tricky assumption that all agents have the *potential* to be full participants in a given decision-making process. This assumption is tricky because it, on some accounts, entails positing 'potential' as an ahistorical feature of human agency, rather than as the product of a historical process. "If we are serious about [rehabilitation], we must develop a new set of expectations, seeing prisoners not as caged, subdued and tamed; but as human beings capable of taking full human responsibility for their own lives and their own actions."[119]

This observation, however, suggests the need for a theoretical revision, not an outright rejection. The appeal to humanity above animality by the Ad Hoc Committee can refer to either an *unbounded* set of unrealized capabilities or it can refer to a *bounded* set of unrealized capabilities. The latter formulation, potential as a bounded set of possible capabilities, is more tenable; potential abilities, like abilities themselves, are constrained by historical context.[120] For instance, a series of smaller-scale strikes by inmates within the prison enabled

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118. First and foremost I have in mind Erving Goffman, but one could also attribute similar approaches to theorists like Michel Foucault and Bruno Latour.

119. OPF, "Ad Hoc Committee on Prison Reform: Response to WBZ Editorial of March 16, 1973" [3324].

120. Take a small example. The general ability to work around constraints in prison – the everyday circum-

collective learning, knowledge about the likely shape and scope of both inmate and officer response to protest, which became invaluable during the sick-out.

Democratic Foundations

What makes extending the strict egalitarianism of participatory democracy to prisons plausible, alluring even, is that all the parties, and all the capacities, relevant to a given decision-making process are (or can be) known. As a consequence of this assumption, however, universal inclusion paradoxically gives rise to what Jacques Rancière describes as a "miscount."[121] As the emergence, consolidation, and disintegration of the prisoners' union at Walpole vividly demonstrates, there is a gap between the party in a given dispute and the part of society that party represents. Politics is largely about traversing this gap, and different agents, individual and collective, appear and disappear over the arc of a given political struggle. "Appearance," Rancière writes, "particularly political appearance, does not conceal reality but in fact splinters it, introduces contentious objects into it, objects whose mode of presentation is not homogeneous with the ordinary mode of existence of the objects thereby identified."[122] By positing a world where *all* agents are always already included, the universal egalitarianism of participatory democracy displaces a discussion of the "mechanisms

vention of restrictions on mail, on distribution of outside material, on the procurement of tools – constitutes a kind of latent political skill. Those skills, in turn, can be mobilized toward collective action in a moment of crisis. At Walpole inmates learned to remove the light fixtures in their cells to jury-rig TV antennas, which enabled them to receive outside news broadcasts during the officer sick-out. OPF, Mar 25, Shift 1 [2227].

121. See Rancière, *Disagreement*: "Before becoming a preference for peace over war, consensus is a certain regime of the perceptible: the regime in which the parties are presupposed as already given, their community established and the count of their speech identical to their linguistic performance. What consensus thus presupposes is the disappearance of any gap between a party to a dispute and a part of society. It is the disappearance of the mechanisms of appearance, of the miscount and the dispute opened up by the name 'people' and the vacuum of their freedom" (102).

122. Rancière, *Disagreement*, 104.

of appearance" where agents come to be recognized as authors of political claims.

This challenge reveals an unacknowledged kinship between participatory democracy and the liberal view described earlier. Each attempts to represent and register a world of difference through narrative; a world of protests, experimental treatment programs, and daily prison violence; a world of Walpoles that wriggle and wrench what is meant by term democratic 'participant.' And each safeguards a particular vision of democracy, of self government, by appealing to an intrinsic feature of the political order. For DiIulio, this intrinsic feature is democratic exclusion; for participatory democrats like Pateman, it's universal inclusion.

At their worst, the liberal and participatory views are not tentative: they know their conclusions before they begin, furtively making their case, blocking objections, reaching for air-tightness. And at their best, these views reduce the politics of participation to the resolution of some contradiction, or the reenactment of some "deep necessity" of the political order.[123] That criminals do not have a right to a full schedule of rights. That the capacity for full participation exists *in potentia* for all beings. What's missed in appealing to intrinsic features of the political world is an openness to novelty in democratic politics.[124] The radical narrative offers a cogent alternative to this analytic impasse.

One of the core claims made by those at Walpole was that democracy ought not be confined to discussions of who should count as a participant, but should be extended to new understandings of what equality means, who possesses it, and where and how it can be practiced. In a word, the radical view of self-rule is a vision of participatory democracy

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123. See Daniel Nichanian, "A Thread of Reciprocity: Michel Foucault's Promise of Freedom" April 2014 on this point.

124. See Glenn David Mackin, *The Politics of Social Welfare in America* (New York: Cambridge University Press, 2013) for a brilliant exposition of this point.

that is neither foundational, nor anti-foundational, but *non*-foundational.[125] It forwards the idea that participation is not a primeval animating force for democratic community, but a site-specific accomplishment enchained and entwined in a wider set of social processes. And, importantly, that the meaning of that accomplishment is bound up with the narratives we tell about democracy. Acts as simple as block counts[126] and keeping floors clean[127] can simultaneously be integral to a philosophy of self-rule and to an authoritarian theory of prison management. The radical participatory vision at Walpole offers a line of inquiry, not a set of answers: an inquiry into the forms of democracy proper to a world where the boundaries of the *demos* are in flux; an inquiry into the potentials we subsequently recognize as reactionary or revolutionary.

While the events I have examined here are from the 1970s, the contest over their meaning is contemporary with the politics of our prison reform moment. Advocacies around treatment and control continue to toe the democratic line of the liberal narrative; "[Inmates'] humanity entitles them to something else: a measure of understanding, and the mercy that flows from a justice system whose rulers remember that they too are tempted to do wrong, and often yield to temptation."[128] Likewise, prisoners' rights and anti-prison activists implicitly call

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125. This view is in kinship with the discussion of "plantation politics" in Robert Gooding-Williams, *In the Shadow of Du Bois: Afro-Modern Political Thought in America* (Cambridge: Harvard University Press, 2009), 236-7. A plantation politics perspective views resistance as participant-based, not expressivist; rather than act on pre-given principles assumed to unite a given group, a participant perspective take the task of establishing such principles to be a political task in its own right.

126. Block counts involve all inmates being locked in their cells between a half hour and an hour and half, at least twice a day. Conducting counts quickly and accurately became a source of pride for many block captains. OPF, Mar 16, Shift 1 [919].

127. "I am impressed by the amount of 'inside' control the inmates have. There seemed to be a general concern for image and welfare and consequently the inmates handle themselves in a good manner. Everyone knew what he had to do – whether it be cleaning up [or] kitchen help, they did a good job." OPF, Apr 21, Shift 2 [4087].

128. William J. Stuntz, *Collapse of American Criminal Justice* (Cambridge: Belknap Harvard University Press, 2011), 311.

upon the strict egalitarianism of participatory democracy; "If we want to do more than just end mass incarceration – if we want to put an end to the history of racial caste in America – we must lay down our racial bribes, join hands with people of all colors who are not content to wait for change to trickle down, and say to those who would stand in our way: Accept all of us or none."[129] Angela Davis writes in a recent work that "dangerous limits have been placed on the very possibility of imagining alternatives. These ideological limits have to be contested. We have to begin to think in different ways. Our future is at stake."[130] These limits, *our* limits, are inherited from the struggle of previous generations to reform prisons. Buried in the history of that struggle is a set of philosophical resources to reinvigorate a discussion of participatory democracy and punishment.[131]

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129. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010), 258.

130. Angela Yvonne Davis, *The Meaning of Freedom: And Other Difficult Dialogues* (San Francisco: City Lights Books, 2013), 30.

131. I agree with Carole Pateman's claim in her 2012 American Political Science Association Presidential Address that modern variants of democratic theory (in particular, deliberative democracy) don't offer a persuasive account of the relationship between deliberation and institutional structures. A revitalized participatory democratic theory offers the opportunity to explore what it would mean to democratize our 'democratic' institutions. Carole Pateman, "Participatory Democracy Revisited," *Perspectives on Politics* 10, no. 01 (2012): 7–19.

CHAPTER 4

MAD POLITICS: INSANITY, LAW, AND PATIENT COLLECTIVE ACTION

The mad are often taken to be irrational, dangerous, or even otherworldly; objects of pity, care, or concern, but not, on most accounts, the proper subjects of democratic institutions. But the reality of asylum life suggests a more complex picture. Patients can be sophisticated participants in the institutions tasked with their confinement and care.

The basic architecture of legal rights for patients committed to mental hospitals that we know today didn't emerge until the 1960s and 70s.[1] Before that time, patients had little recourse to the courts to address intolerable hospital conditions or to protect their due process rights.[2] For those found incompetent to stand trial, like many of the residents of Howard Hall described below, the situation was particularly bleak – even if patients were judged to be of sound mind, they would immediately face a criminal trial or plea deal, then be shuttled off to prison. Despite the inability to make a cognizable legal claim, and despite significant collective action problems – ubiquitous potential for ward conflict, staff and patient predation, various and sundry cognitive disabilities – patients could, and did, collectively advocate for better ward conditions. How did the "mutterers, the masturbators, the paranoid" of Howard Hall accomplish such a feat?

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1. That is, basic due process protections for persons subject to indefinite commitment (*O'Connor v. Donaldson*, 422 U.S. 563), prisoners who had been transferred to mental hospitals (*Baxtrom v. Herold*, 383 U.S. 107), defendants found incompetent to stand trial (*Pate v. Robinson*, 383 U.S. 375), and a right to treatment in the least restrictive environment available (*Lake v. Cameron*, 364 F.2d 657).

2. While the United States Supreme Court held in 1940 that due process is required in judicial proceedings that involve persons alleged to be mentally ill (*Minnesota v. Probate Court of Ramsey County*, 309 U.S. 270), the contours of that due process right were left ambiguous and largely unenforceable.

A vibrant body of scholarship on legal mobilization has pointed to the influence of law at the edges of society; at the margins of 'empire,'[3] for example, or where workers' rights are aspirational, not an actually existing remedy.[4] Even when legal institutions have weak reach or no reach, subjects articulate their claims in recognizably legal terms. Other scholars have pointed to the institutional order of various kinds of outlaws – gangs, mafia, and even pirates. These latter groups, the evidence suggest, are not in fact 'lawless.' Raw economic interest or even a remixing of common law norms can create order outside of traditional sovereign borders.[5] The result, again, is not the absence of law, but an extension of law beyond core features of the state.

Unlike these topics, the internal governance institutions of custodial populations have received relatively little attention. As many empirical researchers have noted, the difficulty of finding data creates a significant barrier. And the few studies that do exist focus on the law and economics of organization. While useful, this approach starts with a presupposition that is explicitly challenged by many democratic theorists, that the mad can be represented as the traditional rational agents of social choice theory. I'm interested in understanding patient participation as a site-specific accomplishment, not simply as a specific example of the more general phenomenon of rational choice.[6]

This article investigates the internal governance institutions of the "criminally insane" by

3. Lauren Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (New York: Cambridge University Press, 2009).

4. Michael W. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: University of Chicago Press, 1994).

5. Here I have in mind the example of "piratical" law; that is, the law and organizational politics of 16th and 17th century pirates. See Peter T. Leeson, "An-Arrgh-Chy: The Law and Economics of Pirate Organization," *Journal of Political Economy* 115, no. 6 (2007): 1049–94 and Benton, *A Search for Sovereignty*, 104-161.

6. See, for example, the foundational studies of Gary Becker.

examining the organizational politics of the rise and fall of a patient federation at St. Eliza-beths Hospital between 1940 and 1960. To become participants in the hospital order, patients required mechanisms to test reality, resolve conflict, and represent their interests. Patients and staff devised two sets of institutions for this purpose. First, I analyze the system of collective organization that gave rise to the early "Patient Administrative Groups" in the hospital. And second, I examine the strategic use of the traditional hallmarks of democratic governance – election, representation, deliberation, constitution-making – by hospital staff to control wards. Patient self-government created sufficient order and cooperation to make available new forms of participation, along with new possible extensions of paternal rule.

Patients' administrative groups (PAGs) and the Patients' Federation, which will be de-scribed below, left numerous traces in the historical records of St. Elizabeths Hospital.[7] First, there is 428 cubic feet of administrative archives housed in Record Group 418 at the National Archives and Record Administration (NARA). This includes, for example, various annual reports of the administrative units of the hospital and sundry memoranda to and from the Superintendent at the time, Winfred Overholser. Some ward dramas played out on a month-to-month timeline, requiring a careful look at the monthly reports of the various divisions and subunits in the hospital. Other files available at NARA were used to craft this case study, documents ranging from declassified reports on group therapy in the military to personal correspondence among high-level administrators.

Second, I've gathered works authored by various psychiatrists that worked in Howard Hall

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7. It was Matthew Gambino's careful archival work in his dissertation on St. Elizabeths that prompted me to start digging for more information on the P.A.C. and Patients' Federation. See Matthew Gambino, "Mental Health and Ideals of Citizenship: Patient Care at St. Elizabeths Hospital in Washington, D.C., 1903-1962" (PhD thesis, University of Illinois at Urbana-Champaign, 2010); Matthew Gambino, "Erving Goffman's Asylums and Institutional Culture in the Mid-Twentieth-Century United States," *Harvard Review of Psychiatry* 21, no. 1 (2013): 52–57.

during this period. Articles published by Joseph Abrahams, Francis Tartaglino, and Bernard Cruvant were particularly helpful. Beyond published monographs in psychiatric journals like *Mental Hospitals* and the *American Journal of Psychiatry*, I had the good fortune in 2014 to meet and conduct a series of interviews with Dr. Joseph Abrahams himself, 98 years old at the time. When combined with a recently published 850-page, two-volume annotated collection of his session notes (originally typed up by patients), I was able to get a portrait of the early group intervention in Howard Hall at a unique level of granularity.

And finally, I've collected a variety of patient-authored works. The Saint Elizabeths Health Science Library houses a major run of the *Howard Hall Journal* (later the *John Howard Journal*) and the *Elizabethan*, both patient-authored newspapers. The editorial pages of the *John Howard Journal* in particular were fruitful for mapping various patient attitudes.[8] As a condition of access to these files, I am not allowed to publish the names of the patient authors.[9]

The central ambition of this chapter is to provide a coherent account of the rise and institutionalization of self government in Howard Hall while remaining fully faithful to the available data.[10]

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8. This data, of course, is partial and inferences made from it need to be carefully contextualized.

9. I redact the patient name with "[patient]" when necessary.

10. To paraphrase the words of a patient editor of the *Journal*: we're all swimmers in the depths of mental illness, as we dive into ourselves to fish for the the meaning of our actions let us remember not to indulge in telling tall "fish stories" about what we've found. "Cover Story," *John Howard Journal* 17, no. 6 (1956): 1. [Accessible at St. Elizabeths Hospital Special Collections, Washington, D.C.]

Two Visions of Self-Government

Consider two visions of ward self government. The first comes from a gushing Harper's feature on St. Elizabeths in 1956 for the hospital's centennial:

> When [the patient] was admitted to Howard Hall, the walled maximum-security building for the criminally insane, he expected cells, rifles, side arms, perhaps clubs and blackjacks. Instead he was escorted to his ward by a fellow patient, introduced around, and given a tour of the building. He saw patients working in a shop (one of them taking a correspondence course to learn how to be a radio mechanic), editing a newspaper, playing softball and badminton, even pitching horseshoes; he heard a patient orchestra practicing; he was told that there was patient self-government in Howard Hall, and almost no attempts at escape.[11]

At roughly the same time,[12] Erving Goffman was conducting ethnographic fieldwork that would culminate in *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates*. Goffman writes:

> Although house organs [patient newspapers, official publications] have been customary from some time, it is only recently that a somewhat similar form of role release has appeared in total institutions; I refer here to the several forms of "self-government" and "group therapy." Typically, the inmates speak the lines

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11. Natalie Spingarn, "St. Elizabeths: Pace-Setter for Mental Hospitals," *Harper's Magazine*, Jan 1956, 63.

12. "Dr. Erving Goffman has been working in Special Services as a volunteer recreational worker. [...] He has been widely accepted by the personnel and the patients, and seems to be doing his sociology job inconspicuously, as he wished." Jay L. Hoffman to Winfred Overholser, 23 Aug. 1955; Monthly Reports, 1906-1967; Records of the Superintendent [Monthly Reports]; Record Group [RG] 418, Entry [E] 22; National Archives and Records Administration, Washington, D.C. [NARA].

and a congenial member of the staff performs the supervision. [...] The inmates are given the privilege of spending some time in a relatively "unstructured" or equalitarian milieu, and even the right to voice complaints. In return they are expected to become less loyal to the counter-mores and more receptive to the ideal-for-self that the staff defines for them.[13]

On the one hand, we have a vision of a community, a small city of the mad. This vision, the official line at the time, is one where patients learn to be capable citizens through opportunities for self development, whether through work, play, or participation in organizational management. On the other, we have a vision of 'self-government' as an insidious extension of totalitarian rule, a means of turning patients against each other and against themselves. Between these two accounts the object itself – the practice of patient self-government – is largely lost to contemporary discussions of democratic politics.

I'll begin by describing how patients overcame the problem of collective organization, then describe the bureaucratic politics of both the PAG and the Patients' Federation.

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13. Erving Goffman, *Asylums: Essays on the Social Situation of Mental Patients and Other Inmates* (New York: Random House, 1961), 97.

The Problem of Collective Organization

Howard Hall was the maximum security building of St. Elizabeths Hospital,[14] tasked with caring for about 170 of the institution's most dangerous patients.[15] Official accounts paint a bleak picture of the Hall itself: "forbidding and cheerless,"[16] "very old,"[17] "obsolete equipment and furnishings,"[18] a "medieval fortress."[19] Ezra Pound, perhaps St. Elizabeths most famous patient, used a more poetic adjective with a visiting confidant in 1946: "hell hole."[20]

Authoritarian control by a dedicated group of attendants made the difference between life and death on the nine wards of Howard Hall.[21] The reasons varied. One psychiatrist argued that a significant minority of the patients in the Hall were "malcontents who, in their striving for power or as an expression of hostility, kept a good portion of the patient

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14. Daily average number of patients on the rolls between 1946 and 1947 was 6,484. See "Movement of Population"; Annual Reports of the Subordinate Units, 1919-66; Records of the Superintendent [Annual Reports]; RG 418, E 20; NARA. The administration of St. Elizabeths in the mid-1940s was divided into three clinical branches, each with approximately two thousand patients. Each branch was divided into smaller administrative units called services (Detached Service, Westside Service, Eastside Service, etc.), and each service in turn was composed of one or more buildings, with each building housing a number of individual wards. Howard Hall housed 170-180 patients in 9 wards. "Monthly Journal is Outlet for the Violently Insane"; Monthly Reports; RG 418, E 22; NARA.

15. Patients facing criminal charges found *non compos mentis*, those that had attacked other patients or staff, and, in 1947, those admitted under the Sex Psychopath statute. "Needs of the Hospital" in Annual Report of Saint Elizabeths Hospital for the Fiscal Year 1947; Annual Reports; RG 418, E 20. Also, as with most custodial institutions, there was a class bias. Patients noted that those with money were sent to a "rest home" or a "retreat," those without, to asylums like St. E's.

16. See Bernard A Cruvant, "Maximum Security and the Therapeutic Milieu," *Psychiatric Services* 3, no. 6 (1952): 6–7.

17. E. D. Griffin to Winfred Overholser, 1 Jul 1946; Annual Reports; RG 418, E 20; NARA.

18. Griffin to Overholser, 1 Jul 1946; Annual Reports.

19. Joseph Abrahams, personal interview, Jan. 2014.

20. John Tytell, *The Solitary Volcano* (New York: Anchor Doubleday, 1987).

21. Joseph Abrahams, *This Way Out: A Narrative of Therapy with Psychotic and Sexual Offenders*, vol. 1 (University Press of America, 2010), xiv.

population in turmoil. The absence of a planned therapeutic program and the repressive

atmosphere made excellent propaganda for their destructive efforts."[22]

One incident was particularly vivid in the minds of staff in the spring of 1946:

> On March 6, 1946, Mr. Charles G. Repass, attendant on Howard Hall 1, was
> severely injured by [patient]. The patient stabbed the attendant in the glabella[23]
> with a pointed piece of wooden molding. He was immediately given emergency
> attention [...] In this regard I wish to point out the fact that there are a great
> many patients in the Howard Hall building with exceedingly assaultive tenden-
> cies. Very often the attendant, nursing, and physician personnel are subjected
> to great danger and not infrequently employees are injured in the performance
> of their regular duties.[24]

Howard Hall in the mid 1940s was, by all accounts, a feared unit by patients and staff alike.[25]

After a particularly daring escape by two patients in April of 1946,[26] large floodlights were

installed outside the walls to deter further attempts. Bare and violent, the records from this

period portray Howard Hall (in an irony to its name sake, the famous prison reformer John

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22. Cruvant, "Maximum Security and the Therapeutic Milieu."

23. The glabella is the smooth part of the forehead between the eyebrows.

24. Jerome Kavka to Addison M. Duval, Mar. 1946; Monthly Reports; RG 418, E 22; NARA. A version of this story was also told to me in an interview with Dr. Joseph Abrahams.

25. "In that period prior to the development of any planned therapeutic programs, Howard Hall was feared unit. Patients and personnel both dreaded the words. Some employees even resigned rather than consent to be assigned to work in maximum security. Patients in other units (minimum security) were often told that they would be sent to the Hall if they continue to be uncooperative." [Patient], "Exodus Plus Seven," *John Howard Journal* 18, no. 9 (1966): 6.

26. "General Prisoner [patient] completed his escape by scaling the Howard Hall wall, but General Court-Martial Prison [patient] was apprehended in the outer Howard Hall courtyard and successfully returned to his ward. Rather extensive repairs are being made to the Howard Hall Building to prevent further escapes of this type." Report submitted to Addison M. Duval, Apr. 1946; Monthly Reports; RG 418; E 22; NARA.

Howard) as a bastille, not as a therapeutic hospital.[27]

However, this time also marked a transition from St. Elizabeths as a "war-time hospital" to a "peace-time hospital":

> The supply of foodstuffs, textiles, clothing, and other needed materials has increased substantially, although the costs have shown a disturbing increase. Personnel of all classes has become more plentiful, so that further attention to the treatment and other needs of the patients has been possible.[28]

Moreover, psychoanalysis had come into its own during the war. Talk therapy proved effective on the battlefield, and, as a consequence, it enjoyed a high status among professional psychiatrists in the 1940s and 50s.[29] At a large institution like St. Elizabeths, one-on-one talk therapy wasn't feasible.[30] As an alternative, various psychoanalytically-inspired group treatment methods were investigated and tested at the hospital.[31]

Drawing inspiration from Clifford Shaw, a sociologist at the University of Chicago, a newly hired[32] psychoanalyst by the name of Joseph Abrahams became interested in the possibility of therapeutic intervention in Howard Hall. The wards of Howard Hall at the

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27. "Howard Hall had an iron gate, this thing was a medieval castle. It had a reputation as a port of no return. You went to Howard Hall and you were finito." Joseph Abrahams, personal interview, Jan. 2014.

28. Winfred Overholser, Forward to the Annual Report of 1947; Annual Reports; RG 418, E 20; NARA.

29. See generally Gerald N Grob, *The Mad Among Us: A History of the Care of America's Mentally Ill* (New York, N.Y.: The Free Press, 1994).

30. On the feasibility of therapy in a large institution, see Goffman's note in Goffman, *Asylums*, 312.

31. Superintendent Overholser, for example, sent staff to observe Jacob Moreno's "theater of psychodrama" program in New York in 1939, then implemented a version of the program at St. E's in the early 1940s. See Gambino, "Mental Health and Ideals of Citizenship., 247. Various other home-grown experiments are evident in the archive, many of which are traced to Dr. Lazelle.

32. For a brief summary of Joseph Abrahams's path to the hospital, see his autobiography titled *A Passionate Psychoanalyst*.

time were segregated, and with the blessing of the hospital superintendent Abrahams began his group therapy experiment on the black admission ward. Abrahams's notes describe the first day of the intervention:

> November 6, 1946. I began the session by "casually" sitting down on a bench at one end of the dayroom of the black admission ward. Two patients soon approached me, both in manacles [...] I asked them how they were getting along. They responded with a request that I take their wristlets off. I suggested that we discuss that "problem" with the entire ward group. They said they didn't care how it was done. Those two patients then proceeded to assemble eight more patients, and we seated ourselves in a semicircle at the end of the dayroom. I explained that we were gathered to talk over problems on the ward, one of them being the wristlets on [the patient] and his partner, who appeared emotionally aroused. Three of the semicircle showed overt interest.[33]

On Abraham's own account, in this first session he was

> looking for the formation of the unity that marks a therapeutic community, a social unit separate from, but alongside the alienated world of the patients, and linked to the reality I was representing. I conceived that unity to be transactional in nature, if the definition of transaction is a unity of interacting entities. More-over, [...] that unity was a new reality, taking its place alongside accustomed reality.[34]

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33. Abrahams, *This Way Out*, 1:6.

34. See Abrahams, *This Way Out*, 7. Also, "These psychotic people would be engaged in autism, and they

In other words, the ambition of the initial intervention was not (nominally, at least) to jar patients into accepting a particular, external institutional reality; rather, it was to draw them into a consensus vision of reality defined by the interaction of members of that small group on the ward.

The goal of his psychoanalytic approach was to talk through the patients' inner disturbance, rather than to talk over it. Deliberation was at the heart of the theory. The patients' role in the "schizophrenic society" was to, as much as possible, help each other attain the insight and change needed to get along better in the group, then in the outside world.[35] Psychotics could come to recognize psychosis in others, even if they had difficulty recognizing it in themselves.

Twice a week Abrahams would come to Howard Hall. Not everyone present at the group spoke, so Abrahams would solicit participation in a loosely "representative" fashion:

> Somebody would be here muttering, someone would be here masturbating, another would be lying around, you know, these were psychotic individuals. I would use the representative principle. Who was representing which factions of this group, and I would acknowledge that person.[36]

Abrahams would attempt to generate reactions ("by being evocative, sometimes provocative") from members of each faction in the group – to use some of the language above, the

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would be off in another world. And they're not going to come out of that world unless you're attractive enough in this world. I would talk in an evocative, sometimes provocative manner to lure them." Joseph Abrahams, personal interview, Jan. 2014.

35. Joseph Abrahams, "Preliminary Report of an Experience in the Group Psychotherapy of Schizophrenics," *American Journal of Psychiatry* 104, no. 10 (1948): 613–15.

36. Joseph Abrahams, personal interview, Jan. 2014.

mutterers, the masturbators, the paranoid.[37] The group would also make representation and participation an explicit object of discussion, hashing out proper seating arrangements, who should chair the session, and the general goals of the group.[38] These discussions about group structure ranged from ordered to haphazard.[39]

During those first months of sessions, discussions could get heated, sometimes even leading to physical altercations:

> The group became tense, and [patient] Bostic appeared agitated. He stood, and stated, in a determined, low voice, "Vince, you're going to have to kill me." [Patient] Vince Jordan suddenly ripped off his coat and the two members met in the middle of the room and pummeled each other, mainly in the body. Members of the group, the attendant, and myself, attempted to separate the combatants. We succeeded, after several minutes of scuffling. Vince's nose was bloodied, and Bostic's lips lacerated on their inner aspects.[40]

Order, in the last resort, was maintained by "burly attendants" who would separate and

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37. "The group met in the day room of Howard Hall 3, in a milieu of 20 patients of various sorts, most of them quiet because of withdrawn schizoid behavior, semi-idiocy, and vegetative general paresis." Abrahams, *This Way Out*, 67-68.

38. "The group went on to discuss organizational matters – seating arrangements, care of property, how to avoid bad feelings over use of books and group property, and the purpose of the group. [...] We discussed parliamentary rules of conduct, and of the possible election of a presiding officer. The group, at my suggestion, decided to elect a member as president for one week at a time, to 'spread it around.'" Abrahams, *This Way Out*, 67-68.

39. As an example of the latter, consider the following vignette: "The group began with an election of a new chairman, the problem being brought up by a member who expected to leave the Hall the next day. A number of people were suggested at random by an apathetic group, among who were Foster and Harvey. Harvey ran a strong second to a dark horse candidate. I congratulated the winner, and reminded him that despite the backhand way of the group the position was realized by all to be a responsible one." Joseph Abrahams, *This Way Out: A Narrative of Therapy with Psychotic and Sexual Offenders*, vol. 2 (University Press of America, 2010), 511.

40. Abrahams, *This Way Out*, 1:182.

isolate the offending parties. In most cases, however, conflict was managed by redirecting the agitated individual back to the group: "Abrahams, you're a goddamn son-of-a-bitch." "Well, group, what do you think? Am I a goddamn son-of-a-bitch?" "Let's discuss that."[41] The goal of the group leader was to subtly conduct the group towards addressing a particular individual's problem behavior. The ultimate ambition was to provide a scaffolding for the group to conduct itself. In the most successful cases, the groups would be self maintaining, "with the sessions continuing after the doctor leaves, and at times when the doctor cannot appear under the general responsibility of the attendant."[42]

The dynamic of the group wasn't a simple function of its component parts. As individuals began to leave the Hall for less restrictive wards (something rare in previous years), the inflow of new members didn't appear to disrupt the integrity of the group process. Reporting to his superiors in the hospital, Abrahams wrote, "while there is a constant flow of patients through the groups, the phenomena described seem to have sufficient momentum so as not to be seriously affected, although longer exposure per patient would be helpful."[43]

Higher-up members of the St. Elizabeths administration were uniformly positive about Abrahams's program.[44] In the margins of his first monthly report, for example, his supervisor Bernard Cruvant scribbled "Enthusiastic, interested, cooperative, and intelligent. A desirable man but needs tempering. Somewhat anxiety-ridden -BAC [Bernard A. Cru-

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41. Joseph Abrahams, personal interview, Jan. 2014.

42. Joseph Abrahams to Winfred Overholser, 6 Jul. 1949; Monthly Reports; RG 418, E 22; NARA.

43. Joseph Abrahams to Winfred Overholser, Mar. 1948; Monthly Reports; RG 418, E 22; NARA.

44. "Group psychotherapy was inaugurated during the past year. This form of therapy is still in the experimental stage but should prove of value as an additional therapeutic procedure in mental hospitals." "Psychiatric Services" in Annual Report of St. Elizabeths Hospital for the Fiscal Year 1947; Annual Reports; RG 418, E 20; NARA.

vant]."[45] The perceived success of group psychotherapy in the Hall in those first few months facilitated its quick spread throughout the hospital.

The patient response to Abrahams's groups varied. Some toed the line: "Dr. Abrahams who works with us here in the Hall is someone to whom we are all very grateful for helping us solve our problems and finding out what brought us here. ... Let us all pull together, and take our place in society together."[46] Others were less sure of the value of group therapy, "They [groups] are interesting, from the stand-point of applied therapeutics, but do they accomplish anything? ... The main difficulty, as seen by Your Reporter, thus far, is that the Group seems to wander - they digress - and nothing seems to be done to correct this situation. Why?"[47] And some were more directly critical: "Yet I was hostile to group therapy at first. It seemed to me a cut-rate modification of individual psychotherapy, an ersatz, prostituted, watered down system evolved out of necessity, embellished with a new name, and a few flourishes of theory to make it appear respectable."[48]

Ward staff was another matter; nurses and attendants were more uniformly reticent to accept the changes.[49] Once quiet wards were now more lively; one began to hear the

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45. Joseph Abrahams to B. A. Cruvant [margin note], 30 Dec. 1946; Monthly Reports; RG 418, E 22; NARA. Margin notes were a way to express disapproval and, potentially, spell the end of a young intern's or resident's career at St. Elizabeths. One unfortunate resident received the following notation on his file: "Arrogant, egocentric, bombastic, undependable, and uncooperative. Unsatisfactory - BAC."

46. [Patient], "Lost Sheep," *The Howard Hall Journal* 1, no. 3 (1948): 2-3.

47. [Patient], "Group Therapy," *The Howard Hall Journal* 2, no. 3 (1949): 4.

48. William Hobbs, "Role of Group Psychotherapy in an Admission Service," *The Bulletin: A Journal of Group Work at St. Elizabeths Hospital* 5, no. 1-2 (1961): 4.

49. An anecdote from an interview with Joseph Abrahams, Jan. 2014: "attendants had repression as primary part of professional identity. Some patients would yell out in the big [integrated] group. Some would go to the john. At one point, the attendants gathered around me, they formed their own group, standing there hostile. 'We can't do this anymore,' 'so and so won't come out of the John.' And I say, 'I don't know about that.' 'We'll take that up in the group.' 'But they're making so much noise!' 'They do get through it, don't they?' 'Yeah.' I then talked to Bernie Cruvant, and said there needs to be a regular training program." Also, from the monthly reports: "Doctor Abrahams has been expanding his work and has given you a good account of some of his problems. One of the chief of these is the Attendant personnel.

"more normal sounds" of conversation on the wards.[50] Some of the attendants, moreover, feared that leniency would lead to difficulties in maintaining control and might even provoke rioting.[51] The fact that rioting did not happen,[52] and that ward staff were either moved out of the hall or retrained in group psychotherapy, helped overcome, or at least contain, that friction.

Once assembled as a group, the black patients would use the session to discuss problems on the ward – privileges, visiting hours, food preparation – in addition to their psychiatric maladies.[53] One of the first patient requests was to the Red Cross for reading material and for opportunities for recreation. When these requests were granted, patients in the white wards took note and asked for group therapy on their section of Howard Hall.[54]

Where in early 1946 there were virtually no therapeutic activities, now, by early 1947, the Hall became host to recreational therapy, occupational therapy, and psychodrama, along with a variety of other therapeutic activities. Patients noticed the change. One, for example, commented that "Many old time patients of Howard Hall are saying that the Hall is a much

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Just as in the case with physicians, no a large percentage of Attendants are temperamentally qualified to be helpers." Roscoe W. Hall to Winfred Overholser, 30 Aug. 1946; Annual Reports; RG 48, E 20; NARA.

50. "Usually in mental hospitals the personnel want to keep the patients quiet. Was contentious. The whole point is to keep them quiet. They then learned to talk to each other more normally. Now, there was more noise on the hall, more normal sounds around." Joseph Abrahams, personal interview, Jan. 2014.

51. "Some of the attendants at first feared that the leniency would mean greater difficulty in handling the patients and might even provoke rioting."

52. Patients mocked this response in an editorial in 1948: "NOW - Webster - says a RIOT is: Wild and loose festivity, revelry, To indulge in an excess of luxury, Create or engage in a disturbance. *Where* and *When* was this Riot that Howard Hall was supposed to have had??????????????????." [Patient], "Bits of This and That," *The Howard Hall Journal* 2, no. 3 (1949): 15.

53. "In response to an unspoken evocation on my part, it also began playing a part as a consultative body on ward problems, which reached its culmination a year later in work with the chief of service, Dr. Bernard Cruvant, when he met with it in what came to be called administrative group therapy." Abrahams, *This Way Out*, 11.

54. Over the course of a year, group therapy expanded to include all the black wards of Howard Hall, then the white wards, then to a larger integrated group.

better place to live in than it was a few years ago. Many improvements have been noticed in the last year [1947] or so."[55]

Over the course of a year, group therapy expanded to include all the black wards of Howard Hall (1946), then the white wards (June 1947), then to a larger integrated group (July 1947).[56] These integrated group sessions were held in the Howard Hall chapel, with as many as 100 patients gathered at one time.

A key moment in the development of group therapy occurred during the summer of 1947. A significant, recurring complaint by patients in the black therapy group concerned food in the Hall – accusations that white patients were given greater portions, concerns about taste and quality of food, and worries about sanitation and preparation:

> Black Therapy Group Session #106. July 24, 1947. [...] Dr. Olinik had investi-
> gated the food situation and I [Dr. Abrahams] transmitted to them that the food
> was divided on the basis of number of patients. This they obviously were not
> convinced of. Then there was much time spent, at least 25 minutes, on similar
> practical matters, such as the cleanliness of the inner courtyard and the poor
> performance of the barbers. I finally interrupted this by pointing out again that
> I had no administrative standing or position in the running of Howard Hall. [...]
> I thought it would be better to bring these problems up with Dr. Cruvant or
> Dr. Olinick directly. The previous chair [of the therapy group] then claimed that
> the group had repeatedly asked Dr. Abrahams to bring Dr. Cruvant to one of
> these meeting but that so far Dr. Cruvant had not been present. I indicated that

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55. [Patient], "Around the Hall," *The Howard Hall Journal* 2, no. 1 (1948): 3.

56. Note, this is 8 years before the mandatory desegregation of the hospital in 1954.

I would again remind Dr. Cruvant of the group's wish if I should see him.[57]

Dr. Cruvant, head of the Westside Service (the administrative unit containing Howard Hall), eventually agreed to meet with patients on the two admission wards. In these "administrative group" meetings, held every other week, the entire body of patients was allowed to voice its concerns.[58] Sessions were organized along New England "town meeting" lines, attended by the physician in charge, the supervisor of nurses, and attendants for the Howard Hall building. While tasked with remedying mundane issues on the ward, these sessions were still understood to be therapeutic. The hospital came to class these groups as "Administrative Therapy."[59] The "administrator as therapist," Cruvant writes in a published article from the period, "occupies a role roughly analogous to 'faculty advisor' or 'sponsor' and is present only as a liaison representative to the hospital hierarchy."[60]

It was during Cruvant's sessions that the Patients' Administrative Group (PAG) was conceived, an organization of patients (to be described more thoroughly in the next session) in Howard Hall structured "along democratic lines of procedure, with officers and committees designed to function for the betterment of ward living conditions."[61] The first significant PAG action was the creation of a "food and welfare committee," composed of two members of each ward, to investigate and articulate the many complaints (noted above) concerning the kinds of food being prepared in the Hall's two dining rooms. Regular weekly meetings

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57. Abrahams, *This Way Out*, 1:178.

58. "Administrative Group meetings were conducted by the Chief of the Service every other week. These meetings are held in the Howard Hall chapel, which is usually crowded to capacity." William Custard to Superintendent, 1 Jul. 1954; Annual Reports; RG 418, E 20; NARA.

59. Cruvant, "Maximum Security and the Therapeutic Milieu," 6.

60. Bernard A Cruvant, "The Function of the Administrative Group in a Mental Hospital Group Therapy Program," *American Journal of Psychiatry* 110, no. 5 (1953): 342–46.

61. [Patient], "Exodus Plus Seven," *The John Howard Journal* 18, no. 9 (1966): 6a.

were held with Dr. Cruvant, the head cook, and a dietician. One patient, echoing Cruvant, wrote: "The most important achievement of the Food and Welfare Committee was that it brought to the attention of the hospital administrators, for the first time, the problems of the patients in an organized fashion that assured them they would be heard and given adherence. In turn, the patients were made aware of the many problems that the administration has to face in the selection and preparation of food, and each respected and made every effort to understand the position of the other."[62]

The successes of the food and welfare committee – successfully replacing "war-time boiled chicken with peace-time fried chicken,"[63] institutionalizing audits of food quality, to name just two – encouraged the formation of other committees and shored up support for the PAG among patients.[64] The changes on the ward were a tremendous boost to patient morale, and patients "gained a sense of personal participation and a sense of responsibility for their own contributions to the welfare of the whole."[65]

Seeing the utility of the large, town-hall style administrative group, Cruvant decided to make ward attendance compulsory. Patients initially resisted this mandate: "It is sincerely believed that attendance would be greater, interest keener, and perception deeper, on the part of the Patients, were the Group Therapy Meetings to be attended on a voluntary basis, instead of a compulsory basis. By making attendance Compulsory, a wall of prejudice has been built; which, we believe, would immediately crumble if the Compulsory 'status' were

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62. [Patient], "Exodus Plus Seven," 6a.

63. Abrahams, *This Way Out*, xvi.

64. [Patient], "Exodus Plus Seven," 6a.

65. [Patient], "Exodus Plus Seven," 6a.

removed."[66] Eventually, however, patients complied with the new expectations.[67]

In addition, patients were also restricted from talking about institutional privileges like parole and discharge in their regular group therapy sessions.[68] Psychiatrists claimed that administrative concerns interfered with group psychotherapy, and that administrative therapy was better suited to sifting out the 'reality' of patients' particular complaints.

Over the next ten years, group work, including administrative groups like the PAG in Howard Hall, spread throughout the entire hospital.[69] Democracy became good therapy.

Bureaucratic Politics

Patient Administrative Groups (PAGs)

But what did 'self government' look like? First, consider the formal structure of the PAG in Howard Hall. Before the demolition of the original Howard Hall building (and the move to the newly constructed John Howard Pavilion), the whole patient population of the Hall would nominate, then elect, officers to conduct its sessions. Nominations and elections were conducted by a show of hands or a voice vote.[70] The PAG would meet semi-monthly; the first

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66. Capitalization in the original. [Patient], "Group Therapy," 4.

67. "Patients resisted for a while, then generally complied, though it did interfere with the voluntary nature of those groups." Abrahams, *This Way Out*, xxxii.

68. "The group meeting held on ward 2 last Monday was interesting, despite the fact that we are restricted from talking about paroles and discharges." *An Elizabethan Anthology* (Washington, D.C.: St. Elizabeths Hospital, 1969), 63.

69. Census of activity groups in 1958 puts the number at approximately 88. "Approximately," because the groups in the census are combined among "Service and Ward Management Groups, Re-motivational Groups, and Patient Councils." Arnold Peterson, "Report on the Survey of Group Activities," *The Bulletin: A Journal of Group Work at St. Elizabeths Hospital* 1, no. 1 (1957).

70. Example of the election of *Howard Hall Journal* board. See Abrahams, *This Way Out*, 293. Need to find other reference.

meeting was to hammer out an agenda, and the second to conduct a session in accordance with that agenda. The vast majority[71] of patients were present, filling the Howard Hall chapel to capacity.[72] The patients would periodically draw up new bylaws for the PAG, which had to be approved by the administrative authorities.[73] The Chief of Service, or one of his representatives, was always present at these meetings. In 1959, when the patients were moved to the John Howard Pavilion, the structure was modified. Under the new system, each of the twelve wards had its own PAG which operated as a unit for that ward. The members of each PAG would elect three members to serve on a Patients' Administrative Council that would represent the entire Hall: a chairman, a vice-chairman, and a secretary. Leading the Patients' Administrative Council (PAC) was an elected executive committee, consisting of three patients.[74] Each ward chairman would have a copy of the bylaws of the Council.[75] As with the previous system, two meetings were held each month, an agenda meeting and a business meeting.

The representative structure of the PAG and PAC created tensions. In a "Dear Abby" type column in the *John Howard Journal* titled "Cousin Mot," one patient penned the following: "Dear Cousin: I am the Vice-Chairman on my ward. Between the Chairman and the Secretary I never get a word in edgewise, my voice is never heard. What can I do? - Name and ward withheld on request."[76] In another column, an anonymous patient

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71. A small group of patients were deemed too dangerous, or having too severe an illness.

72. William Cushard to the Superintendent, 1 Jul. 1954; Annual Reports; RG 418, E 20; NARA.

73. William Cushard to the Superintendent, 1 Jul. 1955; Annual Reports; RG 418, E 20; NARA.

74. To Winfred Overholser, 9 Jul. 1960; Annual Reports; RG 418, E 20; NARA.

75. PAC Report, *The John Howard Journal* 17, no. 2 (1964): 16.

76. "Cousin Mot," *The John Howard Journal* 18, nos. 5-6 (1966): 41.

questioned the possibility of finding a chairman of "such standards" that can "distinguish con-gaming from sincerity" and can judge "the sick from the patients who are just trying to beat their charges" – after all, "if any *sincere* committed patient had peace of mind why in hell would he be here in the first place?"[77] Rephrased, representation only makes sense if the representative is cool, collected, and rational – a stark contrast to the mean John Howard patient.

In addition to PAG (and PAC) officers, patients would be nominated to particular committees. Committees ran the gamut of ward functions: food committee, recreation committee, dance committee, occupational therapy committee, and a school committee, among a host of others. Some committees were standing (education), while others were specific to particular events (dance). The various committees forwarded multiple purposes. On the one hand, they provided a vehicle to organize ward life in the absence of explicit administrative programming. The education committee,[78] for example, organized classes for patients in the absence of an educational program in the Hall:

> Courses are included from very elementary ones to more advanced courses, such
>
> as French and Accounting. The instructors are all patients, and the program is
>
> under the general supervision of one of the patients who has a Master's degree in
>
> education from the University of Rochester, but who unfortunately became in-
>
> volved in some sexual difficulties. The program is now functioning very smoothly,

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77. "Speaking Out," *The John Howard Journal* 20, no. 10 (1968): 11.

78. "A group of six patients have formed a school committee in the hall, and plan on beginning classes in elementary and high school subjects some time during the coming month. We are fortunate in having a patient who has a Master's Degree in education, and who has been placed in charge of the patients' school committee." F. J. Tartaglino to Winfred Overholser, 11 May 1954; Monthly Reports; RG 418, E 22; NARA.

considering its recent installation.[79]

On the other hand, some committees, like the social and recreational committee,[80] were tasked with generating patient enthusiasm for Hall events – from patient productions like "Schitzofrolics" to more mundane events like inter-hall dances. And still more committees were tasked with vetting proposals for policy changes with the administration.[81]

The medium became the message. Adherence to rules and procedures became significant in themselves. When patient representatives were thought to have overstepped their authority, they were reprimanded by the patient population.[82] Likewise, when members of the PAC made promises to the administration it wasn't authorized to make or couldn't keep they faced rebuke from hospital staff.[83]

While the strength of PAGs varied by ward,[84] the central currency in all PAG negotiations with the hospital administration was privileges. Privileges to use the courtyard. Privileges to have coed dances. Conditions for transfer to more privileged wards. Officials in the PAGs

79. William Cushard to Winfred Overholser, 1 Jul. 1954; Annual Reports; RG 418, E 20; NARA.

80. Steven Klinger to the Superintendent, 6 Jul. 1959; Annual Reports; RG 418, E 20; NARA.

81. PAC Report, *The John Howard Journal* 17, no. 2 (1964): 31.

82. Consider the following anecdote: "A committee appointed by the P.A.C. Chairman reported to the Council their proposal. The committee headed by [patient], vice-chairman, submitted their surprising report, which brought strong verbal repugnance from the members of the Council. The committee completely disregarded the purpose for which it was formed, the duty and authority relegated to it by the chair committed the audacious act of completely rejecting the Councils' proposal and substituted one of their own. The Chairman stated, "The chair doesn't take kindly to the flagrant disregard of purpose. Not only has the committee, without authority, rejected Councils' proposal: it proposes to rob the patients of privileges already granted by the Pavilion visiting regulations." PAC Report, *The John Howard Journal* 17, no. 2 (1964): 31.

83. "Dr. Owens frequently becomes annoyed when the chairman of the PAC approaches him to grant the patients privileges, but behind both of their backs groups of men are conniving, disobeying rules and regulations and losing sight of their obligations to their ward community and to themselves." [Patients], "Cooperation," *The John Howard Journal* 18, no. 2 (1965): 4.

84. "While all the wards in the Maximum Security Building have certain committees and some degree of self-government, the degree of self-government naturally varies with the type of ward." Stephen Klinger to the Superintendent, 6 Jul. 1959; Annual Reports; RG 418, E 20.

and PAC were tasked both with obtaining privileges for the unit and securing those privileges once obtained.[85] Every privileged gained was paired with a concomitant responsibility. One physician offers the following example: "the first dance, attended by female hospital patients, was held in Howard Hall. It was extremely enjoyable to all concerned apparently and there were no untoward incidents. [...] I believe the patients are so jealous of this added privilege that they, themselves, will be very careful to avoid any untoward incidents."[86]

When problems did arise, the administration could hold the PAC, not simply individual patients, accountable:

> During one of the dances in the gymnasium a door was forced, resulting in clandestine contacts between some of the patients on our service and some of the female patients who were attending the dance. As a result of this it was necessary to suspend a number of recreational activities and review the entire situation with personnel, patients, and, specifically, with the P.A.C., which, as a self-government group, was charged with and accepted some share of the responsibility for this sort of behavior. Proper and appropriate safeguards and steps toward self-government will need to be taken.[87]

Leverage, however, was not just on the side of the hospital administration. For one, with a chronic shortage of employees, the PAG often took over responsibility of functions previ-

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85. "The work of the executive committee does not merely concern itself obtaining privileges. it is equally the concern of the executive committee and the council to keep what privileges we have obtained. This is done by what is commonly referred to by the staff as EARNED PRIVILEGES. In other words, with each new privilege we acquire there comes a concomitant responsibility." PAC Report, *The John Howard Journal* 17, no. 2 (1964): 16.

86. William Cushard to the Superintendent, 6 Dec. 1956; Monthly Reports; RG 418, E 22; NARA.

87. To David J. Owens, 17 May 1962; Monthly Reports; RG 418, E 22; NARA.

ously in the ambit of ward personnel.[88] These functions ranged from operating elevators to chaperoning recreational activities.[89] In addition the PAG produced a variety of efficiencies for an over-burdened, under-staffed[90] administration. Most significantly, it outsourced monitoring of ward conditions (supervision of ward staff, cleanliness, food quality) to the patients themselves – quality communication between the administration functioned as a form of cheap, decentralized monitoring. Furthermore, the PAG provided a release valve for ward complaints that would otherwise be time consuming to address or adjudicate.[91]

Self-government and the PAG were as much cultures as formal structures. Even proposals for new therapeutic programs had to be couched in the language of democracy and civic voluntarism. In reviewing a proposal for a family dinner program, the First Assistant Physician of the hospital wrote:

> Mrs. Bushart mentions the family dinner program in the Red Cross Building on
> Tuesday evenings and since Mrs. Harris and I have attended this I have thought
> a great deal about how it could be utilized, perhaps on a modified scale on each
> of the Services. There is an almost uncanny home style atmosphere that would
> provide I think, a very tantalizing taste of what one is missing in here no matter

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88. "With the marked shortage of employee help in the hospital, the patients themselves have done much in helping to control difficult situations on the wards. Many times an employee might have been hurt if not for the intervention of patients." Francis J. Tartaglino to Winfred Overholser, 15 Jul. 1957; Annual Reports; RG 418, E 20; NARA.

89. David Harris to Francis Tartaglino, 6 Aug. 1956; Monthly Reports; RG 418, E 22; NARA.

90. "Efforts have been made by the hospital to obtain pay raises for both the residents and the staff physicians but no action has been taken on these recommendations. The staff shortage of physicians continues. I feel this is due primarily to the low salary scale and the lack of fringe benefits." Evelyn B. Reichenbach to Winfred Overholser, 4 Aug. 1959; Annual Reports; RG 418, E 20; NARA.

91. The patients [on Pine ward] now have an administrative group and a group therapy session. ... Complaints have since disappeared and the patients now seem quite content." Francis Tartaglino to Winfred Overholser, 15 Jul. 1957; Annual Reports; RG 418, E 20; NARA.

how good the food is. Since such a small group would have to be undemocratic however, it would have to start with the patient government on the Service and not in a highly planned fashion.[92]

The understood civic and therapeutic function of self-government was to prepare patients for life outside the hospital. Some patients, however, could never reasonably expect to live on their own on the outside. The best these patients could hope for, according to psychiatrists, was to become a useful "hospital citizen."[93]

While the language and culture of self-government became dominant, patients actively deliberated over the substantive meaning of the hospital's vision of civic education. A flare-up in the *John Howard Journal* during the twilight of self-government at St. E's is illustrative. In an editorial that would cause outrage on the wards,[94] the patient editor of the *Journal* wrote:

> Last things first, the doctors, if they treat us like mischievous children, are not without reasons in doing so. Most of us are here as a result of a variety of criminal offenses and are, therefore, rebels – in rebellion against just about every form of authority and the lawful ethics of society. Furthermore, we are, basically, an irresponsible group of passive-aggressive individuals who think that father (the doctor) and mother (the nurse) should cater to our every whim; and, when he

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92. David Harris to Winfred Overholser, 8 May 1962; Monthly Reports; RG 418, E 22; NARA.

93. A supervisor on the William A. White Service explains that "rehabilitation and discharge of the patients from the hospital is the goal of our treatment program. If this cannot be accomplished the aim should to help the patient become a useful hospital citizen."

94. "Dec 1965, The Editorial for last month [. . .] caused quite a stir in John Howard. It also had a few unpleasant side effects – it stirred the emotions and excited them to verbal outbursts. [. . .] cries of 'Who does he think he is?' were heard everywhere." [Patient], "The Christmas Season – A Time for Harmony," *The John Howard Journal* 17, no. 12 (1965): 5.

or she doesn't, we do everything contrary to make things as difficult for them as possible (or so we think) and, in most instances, in making things difficult for them, we thus make things more difficult for ourselves.[95]

The demand for changes on the ward such as increased psychiatric attention and more privileges is less an example of self government and more like children throwing a tantrum in front of their parents.

In response, a patient wrote a tract that could have been penned by Erving Goffman himself. It's worth excerpting at some length:

John Howard - Pavilion?? - is partitioned into four, non-communicating levels of three wards each; comprising a total of twelve separate - confined groups - contained - placid - docile . . . constrained, by the very nature of their controlled divisionment, to impotent competition for unimportant totems of recognition. Twelve groups, rendered manageable by of the oldest approved tactics known to autocratic governments: The diminishing appeasement of group representation. [. . .] Over 4,000 years ago, twelve separate tribes cohered, unified and, as one body, moved [. . .] We are twelve separate wards; and, at once, we are 300 separate individuals, as isolated from one another in purpose and co-operation as the twelve wards are from their neighbor. [. . .] How can the conditions in John Howard be changed? . . . Behold, the people are one . . . And they have all one language; . . . And now, nothing will be restrained from them which they have imagined to do . . . And it shall come to pass, that when all the people

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95. [Patient], "Editorials," *The John Howard Journal* 17, no. 11 (1965): 5.

shout ... The wall shall fall flat.[96]

Self government, on this account, is an appeasement tactic fit for an authoritarian regime. Only when the patients are genuinely united, when they speak in one language, can the walls of the asylum that divide and confine them "fall flat."[97] Perusing the pages of the *Journal* more widely, one gets the impression that no amount of scrutiny seemed to make the confusion around the meaning of self-government evaporate; no amount of heated debate appeared to boil it off.

On the whole, the scope of PAGs touched almost all facets of ward life – from therapy, to administration, to patient culture. The PAG was integrated into a variety of therapeutic activities on the wards, so much so that the historical record is littered with comments referring to patient government as a "dynamic force in the rehabilitation and reorientation of these patients and serves as a basis for the entire therapeutic program."[98]

The Patients' Federation

The concept of *multiplexity*, to borrow from the study of networks, captures the simple intuition that there may be many networks that connect, in different ways, to the same object.[99] Multiple flows between agents can consolidate a particular relationship or, conversely, create frictions. Patient self-government groups were embedded in at least three kinds of relation-

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96. Unbracketed ellipses are in the original. [Patient], "Together or Apart – The Choice is Your[s]," *The John Howard Journal* 17, no. 12 (1965): 20.

97. After this issue, and in the wake of decreasing patient support for the *John Howard Journal*, there was a two-month publication hiatus.

98. William Cushard to the Superintendent, 2 Jul. 1956; Annual Reports; RG 418, E 20; NARA.

99. For a general review, see Charles Kadushin, *Understanding Social Networks: Theories, Concepts, and Findings* (Oxford; New York: Oxford University Press, 2012), 28.

ships in hospital: patients' quotidian ward ties, connections to institutional psychiatry, and links to the hospital administration itself. And it was these overlapping ties, as I'll detail below, that provided the trellis for organizational innovation.

Administrative therapy, as noted above, spread throughout the hospital over the course of the 1950s. During the mid-1950s, physicians on the Dorothea Dix Service[100] organized a series of self-government groups modeled on those pioneered in Howard Hall.[101] The accounts of the "spontaneous" emergence of administrative groups that litter the records of St. E's follow a basic template, and the psychiatric narrative in Dix was no exception. An apathetic ward, through the medium of group therapy and ward self government, was transformed into an active patient community.[102]

The administrative groups, as with the ones in Howard Hall, began to grow – electing officials, creating committees, and negotiating proposals with the administration.[103] Eventually referring to themselves as a "patients' congress," patients began to take on more

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100. Dix does not include Howard Hall, it contains patients with more general grounds privileges.

101. "Plans are also being made to organize a self-government group on Cedar and Spruce Wards. This group has already had its first meeting and has elected its Chairman, and Committees have been formed." F. J. Tartaglino to Winfred Overholser, 9 Jul. 1955; Annual Reports; RG 418, E 20; NARA.

102. "There was a complete absence of ward activity. No occupational therapy, group therapy, or similar activities were available. Unlike the other wards in Dix, there was no self-government. [...] Patients themselves appeared apathetic, sitting around in chairs staring at the four walls, seemed to be invested in little or nothing, and seemed unable to become integrated in any type of relationship. [...] As a result a concerted effort was evolved, personnel was changed, and dedicated and invested personnel were transferred to the ward. The following operations were initiated: A ward group was begun. Patients through the medium of this group formed a self-government, they initiated an occupational therapy of their own for which patients on the ward took the responsibility, as the O.T. workers' time was already fully occupied on the other wards. [...] Within a period of three weeks the following changes in the ward were noted: Patients appeared much more vivacious, showed a considerable investment in each other and in the ward in general. [...] Perhaps the most outstanding change is the well-defined esprit de corps that has evolved in this short period of time. In fact, recently we have been able to leave the ward door unlocked." A. H. Hiracofe to David Harris, 30 Apr. 1957; Monthly Reports; RG 418, E 22; NARA.

103. August 1956, "the patients' congress is developing, and during the month they presented me with a most thoughtful, practical plan for patient operation of the elevators to relieve hospital personnel. I endorsed the plan and have forwarded it through channels." David Harris to Francis Tartaglino, 6 Aug. 1956; Monthly Reports; RG 418, E 22; NARA.

responsibilities on the wards. While some of these responsibilities were related to entertainment or general programming,[104] others had larger administrative consequences. Organized patient labor, for example, eased the pressure created by staff shortages.[105] One staff member quipped, "we have used patient volunteer help at all levels in the [hospital] Branch, and, short of being provided with keys to the hospital, a number of these patients have provided assistance almost at the level of full-time employees."[106] Again, the psychiatric justification for self-government was used to overcome the initial resistance of ward staff (nurses, attendants) to expansions of patient privileges and ward responsibilities. Staff either mouthed the institutional line or were transferred to another ward.[107]

The inertia of the patients' congress was toward accepting more responsibility for ward administration. The Head of Service writes:

> I was most gratified by the decorum, intelligence, and serious interest that they showed toward a number of factors beyond simple entertainment for the service. I am happy to report that the congress itself is growing somewhat restless in the limitations of its duties and is now drawing up a constitution by which it offers itself as an intelligent organization for our use in matters of communication,

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104. "[...] patients' congress activity of the month was a large party in the patio." Joseph Abrahams to Winfred Overholser, 22 Jul. 1954; Annual Reports; RG 418, E 20, NARA. There is also a nice anecdote about going out to see flowers. David Harris to Manson Pettit, 6 Apr. 1959; Monthly Reports; RG 418, E 22; NARA.

105. To the Superintendent, 5 Jul. 1957; Annual Report; RG 418, E 20. "[...] the administrative groups on open wards have been quite effective in obtaining the patients' cooperation on the basis of their self-respect. Their efforts make it possible for the Service to function with a shortage of personnel, though there are are many instances in which the need for personnel supervision is clearly demonstrated for therapeutic value."

106. To Winfred Overholser, 30 Jul. 1958; Annual Reports; RG 418, E 20; NARA.

107. "As a result a concerted effort was evolved, personnel was changed, and dedicated and invested personnel were transferred to the ward." A. H. Kiracofe to David Harris, 30 Apr. 1957; Monthly Reports; RG 418, E 22; NARA.

service sociology, and even discipline. I visualize, not too clearly as yet, a very

progressive usefulness of the congress for the service as well as the patients.[108]

Many of these responsibilities were traditionally tasks of ward staff. Among the more routine, for example, was the working out of housekeeping regulations and the monitoring of their enforcement. Others were non-routine: the patients' congress "worked out the doubling up of wards, freeing certain ward personnel for these [staff] conferences."[109] Administrators noticed these advantages and readily ceded more ground the group.[110]

Patients themselves saw the congress as a vehicle to voice disapproval with new administrative policies: a recent order concerning the racial segregation of dancing[111] was placed before the patients' congress, who decided that the best way to handle the matter was to stop dancing altogether.[112] Like psychiatrists and hospital administrators, savvy patients understood the group as a potential vehicle of expression and action.

At this time St. E's also began to witness the transformative impact of tranquilizing drugs like Thorazine and Serpasil. Consider the following review of an in-house clinical trial

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108. David Harris to Francis Tartaglino, 6 Mar. 1957; Monthly Reports; RG 418, E 22; NARA.

109. David Harris to Francis Tartaglino, 3 Jun. 1957; Monthly Reports; RG 418, E 22; NARA.

110. "In Dix, however, the residents participate much more intensively in administrative matters affecting the patients on their wards. The problems which are raised by patients are handled individually, based on the merits of the particular problem. In order for this system to operate effectively, it is necessary for the doctor to know his patients intimately and extensively; otherwise he is unable to make the decisions or recommendations called for." Jay Hoffman to Winfred Overholser, 27 Nov. 1956; Monthly Reports; RG 418, E 22; NARA.

111. See Gambino's excellent dissertation on this point: "Nevertheless, in February of 1957, Overholser abruptly banned mixed-race dancing at the hospital. The immediate impetus appears to have involved illicit sexual contact between patients. Officials had always worked to minimize 'inappropriate petting' at dances, but the prospect that such contact might occur openly between black male and white female patients may have finally prompted them to administrative action." Gambino, "Mental Health and Ideals of Citizenship., 201.

112. David Harris to Francis Tartaglino, 5 Apr. 1957; Monthly Reports; RG 418, E 22; NARA. In the margins of the report, "no solution! WO [Winfred Overholser]."

of these new drugs from November 9, 1954:

> The efficacy of these two drugs is demonstrated, among other ways, by the drive
> on the part of some of the physicians and ward personnel to obtain additional
> supplies of the drug for additional patients. In order to be able better to evalu-
> ate the results of these drugs, we have restricted their use to limited areas where
> arrangements have been made for appropriate recording of results. In one in-
> stance, I am told, the nurses offered to purchase, themselves, additional supplies
> of Serpasil because of the promising results obtained previously with one or two
> of the patients.[113]

By 1958, the balance of treatment efforts shifted to drugs. One physician lamented, "During the past year there have been no innovations in either the care or treatment of the patients. Tranquilizing drugs have been used in enormous quantities which have certainly controlled disturbed conduct, permitted opening of many of the wards and extended privileges to an ever increasing number of patients."[114] Tranquilizing drugs offered a means to maintain order, and, under certain conditions, give patients greater control over the management of their own psychotic symptoms.

In the spring of 1957, the patients' congress put together a proposal for a hospital-wide "Patients' Federation."[115] As envisioned by a former patient, the new group would be a tool for communication among patients and a means to collectively bargain with the hospital

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113. Jay Hoffman to Winfred Overholser, 9 Nov. 1954; Monthly Reports; RG 418, E 22; NARA.

114. To Winfred Overholser, 30 Jul. 1958; Monthly Reports; RG 418, E 22; NARA.

115. "The Patients' Federation had its first meeting at two p.m. on April 2nd, as a result of the proposal initiated by the patients' congress of this [Dix] service. I think it will be a useful organization, and we are currently continuing to work out some of the birth problems." David Harris to Francis Tartaglino, 5 Apr. 1957; Monthly Reports; RG 418, E 22; NARA.

administration.[116] The first meeting of the Patients' Federation was on April 2nd, and hospital administrators were generally enthusiastic about its potential.[117] The Director of Special Services served as a liaison between the patients and the administrative staff: "The representatives from the services are taking this very seriously with the understanding that hospital rules must be observed."[118] Once Superintendent Overholser explicitly approved the Federation, patients from all of the divisions of the hospital (including the Westside Service that housed the John Howard Pavilion) were represented.[119]

The original vision of the Patients' Federation was as a vehicle to organize all of the patient groups in the hospital into a single bargaining unit. Individual wards would deliberate, then send delegates to an executive hall council. The executive council, in turn, would send delegates to the hospital-wide federation.[120] The structure built was anticipatory; a vision of a kind of institutional democracy to come. More active wards (such as Dix, where the idea for the Federation began in the first place) would sustain the Federation as other divisions of the hospital worked on building collective capacity in their wards.[121]

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116. Anne Bushart to the Superintendent, Oct. 1958; Monthly Reports; RG 418, E 22; NARA.

117. David Harris to Francis Tartaglino, 5 Apr. 1957; Monthly Reports; RG 418, E 22; NARA.

118. Quoted in Gambino, "Mental Health and Ideals of Citizenship., 272.

119. "There are a number of administrative details that need yet to be worked out in regard to this project. Many of the nurses, and at least one of the Clinical Directors, have been unwilling to have their patients participate in the "Patients' Federation" without clear and written indication that the Superintendent approves of this project. A draft memorandum will be submitted to the Superintendent shortly regarding this matter. [Pen notes in margin] Done. WO [Winfred Overholser]." Jay Hoffman to Winfred Overholser, 24 Apr. 1957; Monthly Reports; RG 418, E 22; NARA.

120. "Some twenty-five meetings go on monthly (almost one daily). These involve a group of patients ranging from ten to fifty in number, which meets with one doctor, nurse, social worker, aide or attendant and practical matters of ward and service management are discussed, as well as behavior of patients. Often the interactions get into the areas of personal problems. These meetings go on at the ward level (ward councils), and representatives from these form the executive council. Representatives from the latter attend the Patients' Federation." To the Superintendent, 1 Jul. 1957; Monthly Reports; RG 418, E 22; NARA.

121. Various reforms to improve attendance, open house. Anne Bushart to the Superintendent, Jul. 1958; Monthly Reports; RG 418, E 22; NARA.

Though a few members of the staff opposed these developments, the majority saw the Federation as an opportunity to cultivate the habits of citizenship necessary for patients to return to society. Again, democracy was good medicine; it "discharged negative tensions through planning" and can do "as much for [patients] as do most citizens' associations in the community."[122] More modestly, the goal was to approximate the conditions of *voluntary* confinement.[123] The purpose of the Patients' Federation was to "provide a forum for discussion by the patients of hospital matters, living conditions, administration and recreation, permitting the exchange of ideas [and] growth of patient civic participation as well as [providing] a source to the hospital of suggestions and recommendations."[124] A reference to the Patient Federation even made an appearance in the Annual Reports of the hospital.[125]

Within a year, however, the Patients' Federation began to ruffle both psychiatric staff and administrators. Repeated demands for improvement of hospital conditions left some administrators exasperated: the Federation's "chief concern seems to be their own personal comfort in the hospital rather than any constructive plans for life outside of the hospital"[126] and has created administrative "complications."[127] Three complications are particularly salient in the hospital archives.

For one, patient voice created demands on staff time and attention. Meeting minutes and patient authored "letters of suggestion" had to be reviewed, sessions had to be directed (or, at

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122. To the Superintendent, 11 Jul. 1958; Monthly Reports; RG 418, E 22; NARA.

123. To the Superintendent, 5 Jul. 1957; Annual Reports; RG 418, E 22; NARA.]

124. Quoted in Gambino, "Mental Health and Ideals of Citizenship., 273.

125. "St. Elizabeths Hospital," *Annual Report of the U.S. Department of Health, Education, and Welfare* (1957): 3. In the record, however, it's referred to as a congress, not federation.

126. Evelyn B. Reichenbach to Winfred Overholser, 30 Jul. 1958; Annual Reports; RG 418, E 20; NARA.

127. Evelyn B. Reichenbach to Winfred Overholser, 4 Aug. 1959; Annual Reports; RG 418, E 20; NARA.

a minimum, loosely supervised), and hospital regulations had to be standardized. This was compounded by a perceived lack of effectiveness. From the perspective of administrative staff, one of the central virtues of patient government (at whatever level in the hospital) was its ability to mobilize patient interest in hospital affairs, particularly hospital events. Lackluster performance in generating turnout for a talent show and a series of hospital-sponsored expert panels further undermined the group's utility in the minds of staff.[128]

For another, the democratic mandate of the group was ambiguous. As noted above, the hope was that organizational innovation, mobilization, and representation would be connected in a virtuous cycle. In a phrase: an organizational anticipation of democratic participation.[129] However,

> Somehow, the delegates are not representative of the groups back in the services, and only in rare instances do the delegates come to the meeting with directives from the service group to bring up matters of general interest or replies to questions posed for consideration by the Federation. Except for W. A. White [Service] and Dix [Service], who do manage to elect patients alert and interested in patient organization, the "delegates" are largely passive, easily swayed by the best talkers in the group.[130]

Without representativeness, the Patients' Federation was no different than any other ward council. Staff claimed that the Patients' Federation was a "federation" in name only. Its

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128. To the Superintendent, 5 Jul. 1957; Annual Reports; RG 418, E 20; NARA.

129. Put in other terms: a particular organizational form, while not initially having the full support and participation of the patient population, might mobilize interest, improve legitimacy, and, in turn, generate further cycles of (democratic) organizational innovation.

130. Anne K. Bushart to Winfred Overholser, Oct. 1958; Monthly Reports; RG 418, E 22; NARA.

pretense to democratic authorization, to representativeness, obscured its only real function – as a group therapy session for participating members. And it is precisely this argument that was eventually used to divert resources away from the Patients' Federation.

The third, and most damning, complication concerned the institutional location of the Federation. Part of the complication over location was literal, about where to physically house the Federation.[131] But the heart of the issue was the location of the Patients' Federation among the various systems of knowledge in the hospital. Ambiguity over jurisdiction facilitated the dismantling of the Federation. From the beginning, staff in the Special Services Branch (which housed the Patients' Federation) called into question patients' claim to jurisdiction over particular institutional problems: "some discussion by the staff on just what are matters proper to patient discussion in meetings such as these; at present there are no limits delineated, making it difficult to advise the group. The [staff] advisor questions the advisability of making official memorandum paper available to patient government groups for purposes of writing memos to staff requesting actions from staff on matters that staff is best able to judge."[132]

Eventually, the recreation department in Special Services made the case (as noted above) that delegates were not representative, nor did delegates forward the goal of increasing interest in the hospital's patient programs. They made the case that the group was *psychiatric*, simply another group therapy session, and that a physician ought to be the one to direct the group. However, psychiatrists were ambivalent (at best) about the therapeutic value of the Federation *as* group therapy:

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131. Moved from the basement of one of the halls to the Red Cross (recreation) building. Anne K. Bushart to Winfred Overholser, Nov. 1957; Monthly Report; RG 418, E 22; NARA.

132. Anne K. Bushart to Winfred Overholser, May 1958; Monthly Reports; RG 418, E 22; NARA.

It seems that after relatively short periods of hospitalization the patients tend to socialize with the motivation for making this a "happy home" rather than for reentering a competitive outside activity. This suggests that our permissive ego supportive approach while effective with the psychotic and even distressed neurotic patients nevertheless may not be too desirable and is not stimulative to the patients who have attained good reality testing in this environment.

Under pressure, the therapeutic justification that propped up the Federation began to dissolve. By August 1959, the authority of patient congress in Dix[133] was gutted and the Patient Federation was disbanded.[134]

Was Patient Self-Government 'Democratic'?

"We are 300 divided individuals. A shotgun loaded with bird-shot against a mastodon."[135]

Elegant micro-histories like Jan Goldstein's *Hysteria Complicated by Ecstasy* and Ian Hacking's *Mad Travelers* underscore the fact that there are many ways to be mad, and that those ways are intimately tied to historical context. Rather than asking what modern psychiatric

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133. I believe that during the year things have "tightened up" a bit perhaps constructively in our attitude towards our privileged patients. Manson B. Pettit to Winfred Overholser, 14 Jul. 1959; Annual Reports; RG 418, E 20; NARA. "[...] the Patients' Congress continues to influence treatment in a modest fashion through the maintenance of an organized patient enthusiasm" David Harris to the Superintendent, 7 Jul. 1959; Annual Reports; RG 418, E 20; NARA.

134. "[...] the Patients' Federation no longer functions as it was a complete failure and led to many complications. It is hoped within the next year that this group can be re-established because, in my opinion, it may serve a very useful function if properly directed." Evelyn B. Reichenbach to Winfred Overholser, 4 Aug. 1959; Annual Reports; RG 18, E 20; NARA.

135. [Patient], "TOGETHER or APART – The Choice Is Your[s]," *The John Howard Journal* 17, no. 12 (1965): 19.

disease ailed Nanette (Goldstein's case) or Albert (Hacking's case), we ought to ask what in their respective cultures made it possible to be mad in that particular way.[136] Just as there are many ways to be mad, I suggest there are many kinds of mad politics, each of which is deeply connected to its "ecological niche."[137]

In broad strokes, the case study above starts to describe the institutional mechanisms that made it possible, made it reasonable, to include the mad in ward governance at St. E's in the middle of the century. The informal, patient-driven innovations that emerged out of Abrahams's original group therapy intervention were institutionalized by the hospital administration. Bolstered by administrative needs (staff shortages, efficiency), intellectual fashion (the rise of psychoanalysis), and psychiatric authorization (deliberation as reality testing), patient self-government groups thrived. The unruly and the unmanageable, the mad, became newly governable.[138] Patient speech and action became legible not only to various professions within the hospital, but also to fellow patients. While multiplexity created the conditions of possibility for self-government, it also, as we saw with the Patients' Federation, created the fault lines that lead to its demise. But, for a time, ward participation became good therapy.

Whether one focuses on the original group therapy sessions in Howard Hall, or the strategic use of devices like elections, constitution-making, and deliberation in the more formalized PAGs and the Patient Federation, it would be a mistake to describe patient wards as democratically organized. But glossing the institutional features of patient self-government as

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136. On this point, see Ian Hacking, *Mad Travelers: Reflections on the Reality of Transient Mental Illnesses* (Cambridge: Harvard University Press, 1998), 55.

137. Hacking, *Mad Travelers*.

138. This is not to say that they were 'ungoverned' before, but simply that a new technique of government came into being.

simple instruments of authoritarianism, or mere ideology, misses the heart of the politics of ward government.

As I see it, the politics of patient self government at St. Elizabeths was caught in a strange kind of loop. There was a generative relationship between the institutional processing of patient claims for voice, and the democratic processing of the hospital itself.[139] Democracy *as* therapy and democracy *in* therapy. By the former, I mean the molding of patient participation to secure and extend the authority of those already in power. By the latter, I mean both patients' recourse to group participation as a way to navigate their precarious existence and the unsettling of foundational questions about who ought to govern asylum life. What's generated in this loop, I argue, is a series of curious modifications to core democratic institutions. Four examples from the case study come immediately to mind.

Deliberation

For one, deliberation. To use Abrahams's description from 1946, psychotherapeutic groups were premised on the idea that patients could discuss other members' psychoses, even if they couldn't recognize their own individual psychosis. Administrative therapy built on this insight. In administrative groups patients constructed and engaged a consensus vision of the reality of ward problems. This meant, for example, patients would rule out through discussion complaints thought to be non-real (a nefarious plot by Mrs. Roosevelt,[140] for instance) and create an agenda out of the remaining concerns. The role of the psychiatrist was to

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139. The mechanics of this basic relationship are elegantly articulated by Reiss, who describes the relationship between patient culture and the institution as "dialectical." The loop that I describe is a direct extension of his discussion in Benjamin Reiss, *Theaters of Madness: Insane Asylums and Nineteenth-Century American Culture* (Chicago: University of Chicago Press, 2008).

140. Abrahams, *This Way Out*, 2:745.

prevent epistemic closure – the consensus reality of the group *included* the psychiatrist, who stood in for an outside vision of reality. This kind of consensus building is a twist on the traditional image of able-minded dialog partners that underpins most visions of deliberative democracy. In Howard Hall, we have a vision of reason, of deliberation, without a traditional reasoner. 'Rationality' was an emergent property of patients working in concert, and deliberation was put in service of a shared, world-building project.

Guardianship

This connects to a second modification, a modification to the concept of guardianship. During the early sessions in Howard Hall, as well as in the later Patients' Administrative Groups, psychiatrists and administrators monitored, guided, and shaped patient deliberation. Abrahams facilitated the early sessions in Howard Hall, and attendants were present to listen to grievances in PAG meetings, to name two examples. On one reading, the goal of guardianship was to facilitate what Erving Goffman called "the mortification of the self."[141] In Goffman's terms, entering the institution a patient has a particular "presenting culture" rooted in her home environment. This presenting culture, in turn, comes in conflict with the culture of the institution. The hospital doesn't attempt to achieve a total cultural victory; rather, it sustains a particular kind of tension between the patient's home world and the institutional world. Over time the patient's self becomes, in steps, "mortified." She is progressively stripped of the support relationships that, prior to entry, constituted her presentation of self. Mortification, Goffman continues, is accompanied by the "reorganization of the self" into the administrative order of the institution. One could read Dr. Abrahams's aim of "drawing the

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141. Goffman, *Asylums*.

patient out of his autistic reality" and into the interpersonal, relational world of the group in precisely this way. Guardianship, on this account, amounts to overseeing this process. Deforming, reforming, and transforming the self.

However, the story of self-government at St. Elizabeths isn't quite so tidy. The ambition of psychiatric guardianship was not simply to coax patients into abandoning a particular vision of self, but instead to generate a particular and peculiar kind of deliberative group. One sees this most clearly in the early group therapy sessions in Howard Hall. The relationship between psychiatrist and patient group was, at least aspirationally, about co-creation. In a word: *animation*, not simply mortification. The external reality represented by the physician or attendant in the group was woven into the decision-making process and, as a consequence, into group decisions. The physician's presence in the group stood in for a reality that was authoritative, but not definitive; his perspective was included in the deliberative process, but didn't determine the outcome. In this alternative account, the ambition of guardianship was to ensure the translatability of group decisions to both the hospital community (administrators, psychiatrists, other patients) and, in principle, the wider (sane) community. The ambition was to make both madness and institutional knowledge mutually recognizable, mutually legible.

Representation

Third, the concept of representation was bent and broken on the wards of St. Elizabeths. In trying to find a P.A.G. chairman that could distinguish "con-gaming from sincerity" and adheres to "high moral standards" many patients noted a catch-22: if a patient had enough of a

sound mind to meet these qualifications (and other 'desirable' traits for a representative), she likely doesn't belong in the asylum; if she doesn't meet these qualifications, she's rightfully described as a member of the patient community, but she's not fit to represent the interests of her inmate peers. This tension played out to its logical end in the Patient Federation. If delegates cannot accurately represent the interests of their hall or ward constituencies, the traditional model of aggregative, representative democracy ceases to function. The hierarchical relationship among groups (ward to hall, and hall to the hospital as a whole) dissolves and meetings of the Patient Federation (for example) become, functionally, just another group therapy session. We're left with a difficult, paradoxical, and unanswered question about the place of madness in representative democratic institutions.

Civic Education

And finally, civic education. Patient self government was intended to serve as a kind of applied civics course for patients. By adhering to procedures, discussing ward issues, perhaps even being an officer in a patients' administrative group, one was thought to be better prepared to enter the wider political community. Just as prison inmates will take classes to improve their file ahead of a parole hearing, patients at the hospital participated as a way to demonstrate their general fitness for release.

However, the civic curriculum at St. E's contained peculiar wrinkles. Psychiatrists readily acknowledged, for instance, that a significant number of patients would never leave psychiatric care and the best to which those patients could ever aspire is "hospital citizenship."[142]

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142. One dark, but funny patient poem, for example, suggests that even in death one is just moving to another asylum ward ("And when I saw Peter at the pearly gates, I asked, 'Where's the attendant up here?!'")

The existence of the category of hospital citizen suggests an important dis-analogy between the civic education of asylum patients and the civic education of youth. The civic curriculum of the hospital accepted the possibility, even the likelihood, that many individuals *by their nature* could not and should not (that is, it's therapeutically inappropriate to) strive for full civic freedom.

Another wrinkle in the civic curriculum at St. Es is the tacit assumption that a concern for self-government can be separated from questions of democratic authorization. We have an image of democracy as treatment and not, importantly, democracy in treatment. The result is that the ambition to 'de-totalize' ward culture had the aim of mirroring voluntary confinement, not engaging in a kind of democratic constitution-making. Patients, however, played on the ambiguity between *as* and *in* – collectively organizing concerns, pushing the administration, and using the language of democracy and legitimacy to pressure the hospital to respond to their concerns.

Mad Politics

These modifications to core democratic institutions sum to an odd image, perhaps a mad image, of democracy. Again, many will be uncomfortable with the characterization of the organizational politics of St. Elizabeths as *democratic*. Potemkin, maybe. But democratic? For social theorists like Goffman, patient self-government was, at best, an unsatisfying answer to fears of autocracy. At worst, it papered over political questions entirely. In democratic politics, however, there is not, as in every jigsaw puzzle, only one picture into which all the pieces fit. We've seen that patient government was defined less by purpose than by process,

less by simplicity than by multiplexity, less by consensus than by ambivalence.

My wider point is not to suggest one particular organizational form is reactionary or that another is revolutionary. The case study of patients at St. Elizabeths above is as much a story about the plasticity of power and ideology as it is about innovation and democratic imagination. The rise and fall of patient self-government underscores the fragility of experiments in participation. Rather, my concern is the politics around the emergence, growth, and decline of the forms we subsequently recognize as reactionary or revolutionary. In this case, the conditions that made it imaginable, made it feasible, to include patients in hospital decision-making.

Today, Consumers, Survivors, and Ex-Patients (C/S/X) continue to face many of the same barriers to collective organization and effective interest representation as those experienced by the patients in Howard Hall. Social stigma, fear of violence, fragmented interests, coordination problems, cooptation, and lack of community-level institutional support to name a few. Buried in the organizational history of asylums is a set of experiences, and a set of philosophical resources, to reinvigorate a discussion of participatory democracy, institutional reform, and medical care.

And mass confinement of the mad in the prison system makes the conversation more pressing.[143] An increasingly wide body of scholarship underscores the interaction of madness and criminalization: in gun-control policy,[144] in trying juveniles as adults, in mass

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143. They're a large percentage of state prison population, more likely to be victimized within prison, over-represented in instances of use of force within prison walls, over-represented in use of administrative segregation, disproportionately represented among probationers and parolees. See generally Bruce B. Way et al., "Characteristics of Inmates Who Received a Diagnosis of Serious Mental Illness Upon Entry to New York State Prison," *Psychiatric Services* 59, no. 11 (2008): 1335–37.

144. Jonathan M. Metzl and Kenneth T. MacLeish, "Mental Illness, Mass Shootings, and the Politics of American Firearms." *American Journal of Public Health* 105, no. 2 (2015): 240.

incarceration,[145] and in prisoner re-entry policy, to name a few. Even a cursory reading of this literature leaves one with an image of modern democratic citizenship as embedded within, and dependent upon, a medicalized, psychiatrized, and ultimately punitive discourse of madness.[146] Yet, questions concerning the government of madness continue to be separated from questions of democratic legitimacy.

Benjamin Reiss argues that the legacy of the moral treatments of the 19th century asylum – attending lectures, writing for institutional newspapers, participating in theatrical productions – still lingers in more modern concerns for civic education through "therapeutic community" and "patient-government structures."[147] At the heart of the legacy of moral treatment, he suggests, is a contradiction that contains the seeds of its own undoing. To insist that controlling a patient's environment could cure mental illness ultimately begs the question of who is doing the controlling, and on what terms.[148] The patients of Howard Hall give us a glimpse of both the perils and the democratic possibilities of institutional mechanisms to solicit patient participation.

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145. Bernard E. Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order* (Cambridge: Harvard University Press, 2011); Michael Rembis, "The New Asylums: Madness and Mass Incarceration in the Neoliberal Era," in *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*, ed. Liat Ben-Moshe, Chris Chapman, and Allison C Carey (New York, NY: Palgrave Macmillan, 2014), 139–59.

146. See generally Liat Ben-Moshe, Chris Chapman, and Allison C. Carey, eds., *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*, Array (New York, NY: Palgrave Macmillan, 2014).

147. Reiss, *Theaters of Madness*.

148. Reiss, *Theaters of Madness*, 197.

CHAPTER 5

GOVERNING CHILDREN: RESISTANCE IN A BOARDING

SCHOOL FOR AT-RISK YOUTH

Civic education and democratic community fit hand in glove. As Stephen Macedo writes, it is a mistake to take for granted a mutually respectful desire to live in peace with those one believes to be damned. This desire is a political achievement and not an assumption to be taken for granted.[1] As a consequence, liberal theorists forcefully assert the importance of the educative function of the state: a liberalism that teaches toleration,[2] liberalism with a spine,[3] liberalism as 'soul-making,'[4] a liberal state that 'speaks' on behalf of liberal values.[5] The 'self' in democratic self-government must be continuously formed, shaped, and guided toward civic ends. For adults, this paternalism entails the use of reasonable measures[6] to promote specifically political virtues, but not values about life as a whole. For children, however, these constraints on the civic curriculum are lifted or made lax.[7]

At schools like Winterhill, the case I detail below, 'choice' is an important part of the implicit lesson plan: "The hope is that [students] learn to... learn the value of some of the basics. Honesty. Hard work. Investing in one's education so they can look and realize

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1. Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy* (Cambridge: Harvard University Press, 2003), 20.

2. Amy Gutmann, "Civic Education and Social Diversity," *Ethics* 105, no. 3 (1995): 557–79.

3. Macedo, *Diversity and Distrust.*

4. Anthony Appiah, *The Ethics of Identity* (Princeton, N.J.: Princeton University Press, 2005).

5. Corey Lang Brettschneider, *When the State Speaks, What Should It Say?: How Democracies Can Protect Expression and Promote Equality* (Princeton, N.J.: Princeton University Press, 2012).

6. In other words measures that, minimally, don't infringe on individual liberties.

7. For an incisive analysis of the relationship of children to parental and governmental authority, see "Governing Children" in Ian Shapiro, *Democratic Justice* (New Haven: Yale University Press, 2001).

they have choices. And hopefully those choices are based on the strengths they've developed here."[8] While laudable, this goal shares a philosophical contradiction (or, perhaps, a tension) present in a number of custodial organizations in liberal-democratic regimes. While the ends of a Winterhill education are democratic, the means are unapologetically authoritarian. That is, children have no formal voice in how they're taught to be choosing subjects, they're excluded from what Jacques Rancière calls the "explicative order." In a phrase, children aren't permitted to *choose* choice. Decisions are made for them, not by or with them. Moreover, children's access to the skills and competencies that define adult citizenship is mediated by a series of authorities with absolute "final say": teachers, staff, and parents. This is not because children are insidiously maneuvered off the agenda, but because few even think to question the assumption that "children do not have the right, competence, or capacity to take part in decision-making."[9]

While there is no one image of the child that emerges from the liberal tradition, there is general shared intuition that persists to this day. This intuition, what I'll refer to as *liberal paternalism*,[10] is that childhood constitutes a special status, and that status has a

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8. a73_admin:20. I use codes to refer to adult and child interviews, as well as for my field notes. The first letter is whether the interview subject is a staff member (a) or student (c), the second is a randomly generated code to protect anonymity (in this case 73). Between the underscores is the general position of the person (administrator, teacher, staff) or level of schooling (elementary or middle school), and the final number is a reference to where in the interview the relevant remark was made (in minutes). Field notes are referenced by date.

9. See E. Kay M. Tisdall et al., eds., *Children, Young People and Social Inclusion: Participation for What?* (Policy Press, 2006), 244. In the same vein, the academic emphasis on 'political socialization' has come at the expense of investigating children as *present* beings capable of agency, choice, and involvement in political culture. Tisdall et al., *Children, Young People and Social Inclusion*; Jessica Kulynych, "No Playing in the Public Sphere: Democratic Theory and the Exclusion of Children," *Social Theory and Practice* 27, no. 2 (April 2001): 231–64; Henry Jenkins, "Childhood Innocence and Other Modern Myths," in *The Children's Culture Reader*, ed. H Jenkins (New York: NYU Press, 1998).

10. The phrase is used in Amy Gutmann, "Children, Paternalism, and Education: A Liberal Argument," *Philosophy & Public Affairs* 9, no. 4 (1980): 338–58. Others use "liberal guardianship." See, for example, Joe Coleman, "Answering Susan: Liberalism, Civic Education, and the Status of Younger Persons," in *The Moral and Political Status of Children*, ed. David Archard and Colin Macleod (Oxford: Oxford University

dual character. On the one hand, children are in need of protection; they are dependent on others for their basic care, and they need time to experience, learn, and play without facing serious consequences for their choices. On the other, this means children live under a form of guardianship where their voices and actions have only consultative value. The crux of the liberal paternal intuition is that children cannot fully consent, yet they can justly be assimilated into the liberal polity. Put simply, "present compulsion is a precondition of subsequent choice."[11]

Drawing on a year of fieldwork at Winterhill,[12] a boarding school for at-risk youth, I make the case here that liberal paternalism illuminates certain aspects of democratic life while, or by, obscuring others. What's obscured is that institutions mediate the relationship between competence and the ideal of self-government, and that those institutions are sites of contentious politics. Children resist, reinforce, and sometimes remix institutional governance; all while navigating issues of dependency, access, and ability. I argue liberal paternalism, even in its "liberationist" and "gradualist" variants, fails to provide a compelling vision of the place of children in a democratic polity.

Political Ethnography

In the face of conceptual confusion one simple strategy is to offer a manageable example on which many of the ingredients of the difficulty are plainly in view. Winterhill is just such an

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Press, 2002).

11. David Archard, *Children: Rights and Childhood* (New York: Routledge, 2004), 81.

12. "Winterhill" is a pseudonym. The Social and Behavioral Sciences Internal Review Board (SBS-IRB) protocol for this project requires the school be anonymous. University of Chicago, # IRB13-0945.

example.[13] The boarding school attempts to institutionalize the relationship between state, educator, and parent; all in the interest of preparing children for the demands of liberal democratic citizenship.

I spent the 2013-14 school year at Winterhill observing classes and cottages, interviewing students and staff, administering two school-wide surveys, and collecting various institutional records. I'll briefly describe each data source in turn.

The bulk of my time at the school was spent as a non-participant observer. In the back of the room, moving from class to class and cottage to cottage, I took notes on what happened and general features of classroom governance. For the final third of the year I selected a focal group to follow in depth. With this group (the middle school students, grades 6 through 8), I additionally recorded their informal conversation networks in the classroom and cottage.

I also conducted semi-structured interviews of students and staff. For students, I decided to use a random sample, recruiting five students from each grade level, thirty students total. I asked about their perception of the rules, punishments, and rule-breaking along with what they liked and disliked about various parts of Winterhill, focusing on their concrete experiences in classes and in cottages. The length of student interviews ranged from 15 to 45 minutes. I interviewed almost all (90 percent) of the teachers and administrators that deal

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13. While there are limits to what one can generalize from a single school, organizational ethnography can reveal features of a custodial order otherwise invisible to studies that focus on routine practices across institutions. Moreover, I've centered my analysis of organizational politics on the experiences, relationships, and attitudes of children. This choice serves two ends. On the one hand, it corrects for a general omission. Youth behavior and culture is, wrongfully I believe, sequestered from discussions of organizational functioning. On the other, it provides the data necessary to make sense of children's oppositional behavior. To understand resistance, Henry Giroux warns, "one must either link the behavior under analysis with an interpretation provided by the subjects themselves, or dig deeply into the historical and relational conditions from which the behavior develops. Only then will the interest embedded in such behavior be revealed." Henry A Giroux, "Theories of Reproduction and Resistance in the New Sociology of Education: A Critical Analysis," *Harvard Educational Review* 53, no. 3 (1983): 257–93, 291.

directly with students. These interviews focused on their relationship to students, the types and causes of school misbehavior, the needs of children, and their personal style of classroom governance, along with a variety of questions about the wider Winterhill organization. I also interviewed house-parents[14] about cottage governance, student disobedience, and their experience as employees at the school. Finally, I interviewed a number of administrators in management roles about the wider purposes and objectives of a Winterhill education.

Over the year I administered two surveys, the bulk of which were devoted to collecting data on attitudes and social networks. The first survey asked the children, using full rosters of students and staff, about their friends, which adults they talked to, how often they talked to them, and whom they seek for advice on campus. I also asked a series of social and political efficacy questions. The second survey measures cognitive networks; it maps how students perceive the friendship networks of their peers. Combined, these two surveys give a detailed portrait of the "adolescent society" of Winterhill.

The institutional records of Winterhill were particularly helpful. I've gathered records on disciplinary incidents in class and in the cottages, demographic information, and students' grades and absences over the year. The school also keeps an intricate merit system in an electronic database, which the school administration allowed me to access. Teachers enter a merit when they want to reward good behavior, a "merits used"[15] or a detention if they want to note bad behavior. Consider these entries: "Worked hard all hour," "polite and pleasant in the hallway," "opened a door for another teacher on the way to lunch," or, more negatively, "refusing to accept the consequences of her actions," and "being mean and saying

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14. House-parents are the couples that take care of students before and after school at Winterhill.

15. Student: "why do they call it a 'merits used'? What's the difference between that and a demerit?" T: "Well... that's just what they're calling it now." fieldnotes_2014Apr08.

hurtful things." There are 20,682 entries in the merit system database for the 2013-14 school year. The database is organized by kind (merit, demerit, or detention), time and date, and by the teacher that wrote the entry.

I've also brought together a host of secondary sources, but they're not well represented here. The sum of these data sources is a detailed snapshot of the organization. And, for the moment, the chapter narrative is only generated from a fraction of what I've collected.

Winterhill

The way a school is made is a reflection of a community's values, not a simple formula for improving them.[16] Walking on the grounds of Winterhill, one catches a glimpse of what the utopian architects of the first almshouses and asylums had in mind: to bring discipline to the victims of a disordered society through a well-ordered institution that isolates itself, and its members, from chaotic conditions.[17] An iron fence once lined the property, but no more; now all that encircles the school is one hundred acres of grassy fields and groves. Lush lawns and flowerbeds line a series of paths connecting the various red-brick buildings that define life at Winterhill: the main academic building, the recreation hall, the administrative building, the chapel, and the dozen cottages that are home to the school's young boarders. The main academic building would be the envy of any neighboring public school – multiple computer labs, a small but functional library, classrooms with computers and computer-

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16. Comparative studies of the institutional development of various kinds of "skills regimes" powerfully demonstrate this basic insight. Ben Ansell and Johannes Lindvall, "The Political Origins of Primary Education Systems: Ideology, Institutions, and Interdenominational Conflict in an Era of Nation-Building," *American Political Science Review* 107, no. 03 (2013): 505–22.

17. David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (New York: Aldine Transaction, 2002 [1971]), 138.

assisted technology (SMART Boards, iPads, PCs), a fully stocked music room, a dining hall, and a gymnasium, among other amenities.

The bucolic, tranquil grounds of Winterhill stand in stark contrast to students' home neighborhoods. Pulling from two states, and mostly from one metropolitan area, Winterhill takes in (in the words of one staff member) children in "disadvantaged situations, not disadvantaged children." Many of the students come from city neighborhoods and suburbs where violence – peer violence, police violence – is a reality lived daily. With millions in private funding, parents or guardians are only required to pay a relatively small sum to send their child to Winterhill; a sliding scale based on income that rarely goes above 5 percent of the actual cost of boarding and educating their child. About 90 percent of the young people at Winterhill qualify for reduced or free lunch from the federal government. The vast majority of students come from single-parent homes,[18] including cases where one parent is incarcerated or struggling with drug addiction, and almost all enter the school testing below their academic grade level. Winterhill is not a reform school. Students with serious mental health issues and those with prior contact with the juvenile justice system are not considered for admission. The target population is students, and families, that are "at-risk" based on their socio-economic context. In the eyes of many donors and school staff, these are the "saveable," "reachable" youth that public services have failed.

In all, Winterhill is tasked with housing, educating, and molding the characters of over a hundred wayward youth. And the staff are diligent. From students' 5:45 a.m. wake-up

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18. 15 percent married, 70 percent separated, 12 percent divorced, and 3 percent widowed. My point, of course, is not to prioritize one kind of family structure over another. 'Single parent' is simply an imperfect proxy for the pressure put on primary caregivers. Parents are often the primary source of income for their wider families, and many send their children to Winterhill because they're feeling vulnerable about their ability to adequately supervise their child.

to their 8:30 p.m. bedtime, a company of teachers, houseparents, and administrators shuffle the children through a highly regimented day. No part of the day is unscheduled, no part is unsupervised. The school is the fulfillment of many educators' fantasies – close regulation of student behavior inside and outside of class, consistent communication between teachers and caretakers, a guarantee that students eat three nutritious meals a day, that they have a stable and safe environment at home, that they've slept a full night, that there is someone after school checking to see if children have completed their homework. In fact, one of the dominant complaints of teachers at Winterhill is that the regimentation of students' week is incomplete – many attribute student misbehavior in class to the two nights a week (Friday and Saturday) students are *not* on campus.

In the narrative below I first describe the regime of the custodians, then the adolescent society. Each is a shift in dominant perspective: one from teachers, houseparents, and administrators; and the other from the students. The observer's view, of course, is never absent.

The Custodians

Punishment is expressive. It is as much about poetics as it is about power, and particular punishments are often the source of narrative conflict.[19] The detention hall nicely illustrates this point.[20] One narrative, the view of the teacher that runs the central detention hall, is that kids should be socialized to accept what they'll experience in the real world. Implicitly,

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19. Philip Smith, *Punishment and Culture* (Chicago: University of Chicago Press, 2008), 5.

20. Detentions are either specific to a particular classroom or they are for acts witnessed in common spaces like hallways and the dining hall ("centrals"). A little under half of all detentions are "centrals."

the model is the criminal law: classroom peccadilloes, small offenses, should be punished, but only administratively. As with a traffic ticket, children should pay a fine ($2 per infraction) and carry on. However, more significant offenses ought to result in actual *detention*, in the traditional meaning of the word; being detained for a period of time (stacking chairs, cleaning the computer lab, writing a "respect lesson" essay). Other teachers see detention as a means to teach life lessons, particularly about work. "When you have a job, do you think your boss will accept your excuse for being late?" "Time is money. If you want to waste it, you'll have to pay."[21]

Students offer their own interpretations. Marvin,[22] for example, believes it's important to serve detention respectfully. However, the primary lesson he takes away is not to get angry when he feels powerless: "Winterhill sometimes can crack down hard. Sometimes not. Really depends who is working [...] I don't sweat it too much. Like my mom told me. She cares if I get in trouble, but she said don't keep getting angry about it, 'cause nothing is going to change. It's set in stone."[23] Other students, like Ashley, are more defiant; "They go [to detention], and then it's over with. Doesn't really matter. You go, it happens, go back. You just spent a little more time at school."[24] Bluster and belief, however, are not so easily separated. One eighth grader explains: "Kids all talk like they don't care, but at the end of day they still have to go to the place. They still pout and whatever."[25]

Kids and staff alike try to define the meaning of punishment; they spin the events of

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21. fieldnotes_2014Apr04_3

22. All teacher and student names are pseudonyms, and I've changed the class subject when mentioned (math to science, etc.).

23. c814_middle_7

24. c1056_middle_3

25. c539_middle_6

the detention hall into didactic stories about work, about the law, about masculinity, about power. Detention, however, is only one part of a wider contingency management system at Winterhill. Teachers and houseparents are asked to "catch" children being good in addition to noting misbehavior.[26] The ratio between merits to demerits (detentions, merits used) issued during any given school day is about 3:1.[27] The underlying logic behind this approach is that the quickest and most effective way to promote the display of appropriate behaviors is to reward them. Students accumulate or lose merit points over the school year, and those merits are intended to function as currency in the token economy of the school.[28]

What warrants a merit? Consider a few examples of students 'caught being good' from the 20,682 entries in the school's merit system database: "on task during math," "did not make a fuss about re-doing an assignment," "polite in the hallway," "turned in money found in hallway," and "picking up a tray left by another student." Students are also rewarded with merits for high scores on assignments, homework, and tests. For merits concerning character, the central aim is to reinforce the "four basic skills": following instructions, accepting criticism (accepting 'no' for an answer), accepting a consequence, and disagreeing appropriately. The aim of these skills is to model 'mature' disagreement and reinforce the place of teachers and staff as the ultimate arbiters of proper and improper conduct. Interactions, of course, vary by person and place. My field notes are littered with examples of house-parents

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26. The philosophy of "caught being good" is part of a wider educational philosophy called character education that rose to prominence in the 1990s.

27. This figure applies to the school day; the merit system is only used in school, not in the cottages.

28. The cottages are less standardized than the classrooms. Some house-parents try to use a similar system, giving students, for example, "Vin-cents" (trying to be true to the actual name, which is a pun off of the actual cottage name) which can be redeemed for privileges or snacks. Others are more informal, adding or subtracting time at the recreation hall, on the computer, or on the gaming console based on behavior in the cottage or reports from school.

and teachers talking with students about various personal issues and problems. A common theme, however, is that the staff member rarely reverses herself. Instead, the student is given merits (as a kind of consolation prize) for accepting an unfavorable outcome. As another student stresses, sometimes the incentives work in the other direction: "Here's an example. Like in our cottage we have to run a lap if we're late. We can 'disagree appropriately,' and if we disagree, it's like we then have to run three laps, or write four papers. [My house-parent] just makes it harder than it was to accept the consequence in the first place."[29]

The category "merits used" has two general functions in the school.[30] The first is a kind of in-class currency that students can spend. Students *buy* "a washroom break during class," *rent* a calculator or pencil or pen, or *purchase* "a second copy of the assignment sheet given out yesterday." The second purpose of merits used is an intermediate punishment between a verbal warning and a detention. Students lose merits for, roughly, five types of behavior: being defiant or disruptive, being out of uniform, poor etiquette, not following classroom instructions, or physically or emotionally harming another student. When these behaviors are severe enough, a teacher will give out a detention or a more serious consequence. Classroom grades arguably serve a similar function; grade point average is closely correlated with merits used ($\rho = -.61$) and detentions ($\rho = -.58$). Unlike other kinds of custodial organizations, suspension and expulsion are a distinct possibility within boarding schools. While the numbers may seem small (less than 10 in-school suspensions, 2 out-of-school suspensions, and 2 expulsions), they're outsize in importance. This is because, first, they

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29. c1331_middle_2

30. This likely reflects a transition in emphasis. In previous years, merits used were simply called demerits, and just concerned misbehavior. The school has tried to transition. I was told by staff that, in prior years, some students were so far in the hole that the system stopped functioning appropriately.

consistently figure in students' minds as a *possible* punishment. And second, they define an absolute ceiling or limit to the institutional tolerance of oppositional behavior.

The merit token economy is not intended to be an end in itself. The goals are recognizably Lockean.[31] That is, the logic of contingency management is put in service of a more ambitious set of pedagogical objectives. One sees this most clearly in the cottages. House-parents are trained to use a variation of the "teaching-family model" (TFM) developed for the Boys Town residential facility in Nebraska. The TFM relies on detailed behavioral treatments in a structured, family-like atmosphere with the use of full-time married couples. The following description is from the foundational study of the TFM by University of Kansas researchers:

> The Teaching-Family program has four main elements: a comprehensive skills training curriculum, a motivation system (token economy), a self-government system, and the development of a reciprocally reinforcing relationship between the youths and the teaching-parents.[32]

The goal, the authors continue, is to allow a gradual shift from the use of token-based incentives and disincentives to a more "natural style" where the motivation for compliance becomes the affection and regard of the house-parent.

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31. Summarizing Locke's views in *Some Thoughts Concerning Education*, Jonathan Marks writes, "Here, in any case, is Locke's recommended approach to teaching liberality. One should encourage children to 'part with what they have easily and freely to their friends.' One should reward liberality with 'great commendation and credit,' and make sure that the liberal child 'loses nothing by his liberality,' even that 'all the instances he gives of such freeness be always repaid, and with interest.' In this way, the child will find 'by experience that the most liberal has always most plenty, with esteem and commendation to boot.' Finally, the parent or tutor should make giving 'a contest among children,' so that liberality will be a pleasure to learn, a kind of game, and so that the impulse to get the better of others can manifest itself in kindness, liberality, and civility toward others." Jonathan Marks, "Rousseau's Critique of Locke's Education for Liberty," *The Journal of Politics* 74, no. 03 (2012): 694–706, 697.

32. Montrose Wolf et al., "Achievement Place: The Teaching-Family Model," *Child Care Quarterly* 5, no. 2 (1976): 95.

At Winterhill, house-parents tell a similar story:

> "Basically, we have a structure. It's the Family-Teaching Model. And we try to deal with the students in that capacity. [...] We teach simple things, help them learn different skills they may lack. Communication skills. Coping skills. Things of that nature. We are responsible for building their character to the best of our ability. We're eventually responsible for transitioning them out of Winterhill and into society as a single person. Out there, they need to care-give and motivate for themselves, know how to live on their own."[33]

Success is defined by transitioning students from external incentives to internal motivations. More specifically, as the quotation from the house-parent above illustrates, life-skill training at Winterhill is based on a "behavior deficiency" model of deviant behavior. That is, a "model of deviant behavior by which the youths' behavior problems are viewed as due to their lack of certain essential skills. These deficiencies are considered to be a result of inadequate training and histories of ineffective incentive and example rather than due to internal psychopathology."[34]

Students are encouraged, and sometimes even required to participate in their own governance. Take one example that weighs heavily on the minds of many of the children at Winterhill: drill. The children in each cottage drill as a platoon, practicing marching and maneuvers together for hours each week. Each platoon has a series of officer positions. Students in an officer role run drill practice and lead the cottage ("cadets"), in formation, to

33. a55-56_cottage_1

34. Wolf et al., "Achievement Place," 94.

breakfast and dinner. Officers are selected in a variety of ways. Some house-parents rotate the role, others by cottage election (conditional on good behavior), and the rest fill the role by some version of seniority. When children are in officer roles, they're given the ability to assign punishments to other students and to correct disorderly platoon behavior. Punishments range from making their peers write an essay to doing push-ups. And more informal corrections range from gentle encouragement to whispered threats. Almost every student I interviewed found participation in the military program to be one of the most stressful parts of life at Winterhill.[35] While students wield actual authority over their peers, their participation takes place through pre-given adult forms. The same is true across contexts at Winterhill. Participation is in service of securing and extending a particular vision of self-discipline, leadership, and choice.

One administrator emphasizes that it's hard for students to "be completely lost, to be a wallflower" at Winterhill because "in order to have a basketball team, or a soccer team, or a choir, you need to have engaged students."[36] Directed activities like wood-shop and the art program, on her account, provide avenues for children to become involved and experiment with new tasks and challenges, with the end goal of developing higher-level academic competencies. A similar kind of logic extends to classroom management. Teachers describe children's participation as having two faces. On the one hand, participation is integral to the proper functioning of the class. When students raise their hands, offer answers, and generally communicate their beliefs and preferences, teachers have an easier time assessing how well students understand the lesson (or general expectations). Moreover, when students

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35. A few, particularly those from military families, appreciate the structure and mentioned to me that they would participate even if the program was voluntary.

36. a93_admin_28

are involved in the lesson – coming to the front of class and calling on other students to review the answers to the previous night's spelling homework, for instance – it's easier to sustain the attention of the class. On the other, teachers emphasize that increasing student involvement also increases the chances of disruption and distraction. Some students over-participate, undermining the diagnostic function of question-and-answer exchanges. Some fail to demonstrate the skill desired by the teacher. Others might reject the role assigned to them, for instance, refusing to call on other students when they are told to head the class discussion. Or other students might reject the student nominated to lead the class.[37] And students might subtly (or, in many instances, not so subtly) use their involvement to redirect the conversation in class away from the lesson materials. A shared sentiment among those I interviewed is that children shouldn't drive the lesson plan.[38] Participation is most effective when it is directed or curated.

While governance shares a family resemblance across the various classrooms and cottages at Winterhill, aggregating across contexts conceals substantial variation. Individual teachers and houseparents have particular styles of rule,[39] and the sum of those various styles is what students actually experience at Winterhill. Each classroom, however, is not its own kingdom. One can see many of the same management techniques in each class – using unstructured time at the end of class as leverage, correcting behavior with merits, employing the (encouraged) institutional discourse of 'caught being good' when rewarding students, among

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37. Students start to come in. Everyone is chatting, start to slowly form circle, some are dancing. Student leader tries to get the group to start doing exercises. Other students start mocking her, goose-stepping and shouting "left, left, left, right, left!" "I'm the leader, let's just do this." Chatting continues. fieldnotes_2013Oct22_4

38. "I don't think they drive the lesson plan. I ask the questions, and they respond." a65_teach_11

39. On this point, see Daniel A McFarland, "Resistance as a Social Drama: A Study of Change-Oriented Encounters," *American Journal of Sociology* 109, no. 6 (2004): 1249–1318.

others. As discourses, management techniques, and values steep through the organization, staff absorb and remix those practices. The end result is a governmental structure that is substantively ambiguous. By 'substantively ambiguous' I mean that prescriptions and pro-scriptions are never unified or detailed enough to provide teachers or house-parents with a single uncontroversial view of their role or interests.[40]

In addition to being ambiguous, governmental practices – assembling students for a house meeting, a teacher correcting a student's posture, marching in formation to the dining hall – are meaning-laden. Meaning production is a process by which conventions become intelligible to participants through observable usages and effects.[41] Importantly, like the description of substantively ambiguous structures described below, there are often multiple views of childhood entwined in particular governmental practices.

Sometimes the meanings affixed to practices are intended. One of the head administrators at Winterhill describes the difference between children and adults in the following way:

> "I think kids are for the most part . . . I don't want to say 'truthful.' Kids are more themselves. When you talk to kids, you get more information out of them. As people get older, they get more guarded in their responses." He continues, "I think there is more learning opportunities for kids. Almost anytime you interact with a child it can be a learning opportunity. Sometimes people see actions, in particular misbehaviors, as something that interrupts progress during the day. But really, they are opportunities to teach kids, to instruct them."

40. Roberto Mangabeira Unger, *Politics: The Central Texts* (New York; London: Verso, 1997), 162.

41. See Lisa Wedeen, *Peripheral Visions: Publics, Power, and Performance in Yemen* (Chicago: University of Chicago Press, 2008).

This view of child-as-sponge is relayed to the residential staff during training and underpins much of the disciplinary practices prescribed in the Teaching Family Model. Likewise, assignments are often graded in front of students at Winterhill. A student will submit a math worksheet, for example, and stand in front of the teacher's desk while she reviews and corrects the student's responses. Children's short attention spans need to be met by actions that immediately connect task and outcome. Here the image is of children as overcome by deeper impulses. Close observation of other practices reveals a string of other related images of childhood – child-as-future-adult (characteristics are defined as incomplete, in progress), child-as-unruly (child as animal), and child-as-dependent (defined by base needs, not ethical autonomy) – that underpin organizational practices at Winterhill.

Some images are less explicit. The school is regularly visited by volunteers, private donors, and parents of prospective students. Teachers often change their lesson plan, even change their vocal patterns in presence of these outsiders. And children notice. "Her [house-parent] voice changes all sickly-sweet like when they [visitors] are in the room."[42] Receiving the signal, students largely fall in line. "When you have a visitor, you want to act the best you can, you don't act yourself. [. . .] Normally we're allowed to be loud after work is done, we laugh a lot, we have fun. When a visitor is around most of the time we're reading after things are done, it looks like we're quiet all the time."[43] This was my impression as well. Over time, teachers and students became more accustomed to my presence in the school and, as a consequence, what I observed shifted. If students do act up while these figures are around, punishment is delayed, but more severe. Here, the implicit image is of children as

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42. c1177_middle_7

43. c1441_middle:14

good institutional citizens.

Furthermore, some meanings aren't communicated by specific people or particular practices. Various spatial divisions at the school – in particular, separation of children in the cottages by gender and by their level of schooling (primary, middle, and high-school) – communicate differences in developmental levels and, at times, a disavowal of child sexuality.[44] Likewise, the size of furniture,[45] how desks are arranged,[46] and students' uniforms try to meet students where they are. That is, they are built and arranged on assumptions about the abilities, capacities, and needs of children.

Competing discourses. Management of individuals and collectives. Substantive ambiguity. Expressive and meaning-laden actions and structures. While a useful beginning, this description of governance at Winterhill is one-sided. Individual practices find their being, their reality, only in relation to each other, and their cultural force depends on the particular instance of their use. They have no separate life or essential meaning. The next section tries to place these practices in their wider relational context.

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44. On the administrative level, the solution is spatially separate sexual partners – sometimes to other dorms in same house, but often to another cottage altogether.

45. There are three sizes of student furniture at Winterhill: those for elementary students, middle school, and those for those high school and above.

46. Arrangements range from rows, to clusters, to half-circles depending on the task structure and teacher style.

Time	Task
6:00	*Wake-Up*
6-6:20	*Hygiene/Chores* [Tidy personal space, get ready for school. Dorm details, e.g., cleaning dresser tops]
6:20-6:30	[Report to living room. Clothes look neat, not wrinkled]
6:30	[Student leader lines up the cottage before marching. Medicine is distributed.]
6:45-7	*Pavement* [March in formation to the pavement outside the dining hall. Inspection of 'units' (cottages)]
7:15	*Breakfast* [House-parents model and enforce good manners and appropriate causal conversation]
7:30	[End of meal. Student is appointed to bus the tables, then house-parents escort students to school]
7:45-7:55	*Homeroom* [Announcements, uniform check]
7:55-8:40	*Period 1*
8:44-9:29	*Period 2*
9:33-10:18	*Period 3*
10:22-11:07	*Period 4*
11:11-11:56	*Period 5*
11:56-12	[Line up for lunch]
12-12:50	*Lunch*
12:54-1:39	*Period 6*
1:43-2:28	*Period 7*
2:32-3	*Period 8*
3-3:02	[Announcements, reading of daily merits and demerits]
3:02-3:15	*Homework, Chores, Free Time, Sports* [Arrive in cottages, greet house-parents, check chore detail sheet, look for other instructions]
3:15-30	[Snack time]
3:30-4:30	[Study hall]
4:45	[Line up for pavement.]
4:45-4:55	*Pavement*
5:00	*Dinner*
6:00	*Cottage Time* [Missing homework, missing chores. Relax]
6:30-7	[Showers. About 7 minutes per student]
8:15	[Wind down, put away papers and games, wrap up activities]
8:30	*Reading/Bedtime* [Lights out, door left propped open]
8:30-9:30	*Sleep* [House-parents up for another hour, make sure students are asleep]

Social relationships at Winterhill, like other organizations, are patterned.[47] Importantly, these patterns are not necessarily deducible from formal structures or systems of knowledge. Ethnographic observation is ideal for describing the warp and woof of these relationships. As I'll detail below, children are enmeshed and entwined in informal organizational networks that are *multi-mode* and *multiplex*. In other words, not only do they navigate relationships with different kinds of entities (other children, adults, organizations), they also have different kinds of connections to each of those entities (friendship, advice, dependence).

Consider the timetable for a fifth grade student at Winterhill presented above.[48] There are variations in this schedule, some cottages have movie nights, others might go ice skating one week, then bowling the next. Some students are involved in band or sports. Bedtime might be shifted earlier or later depending on collective cottage behavior. However, *mutatis mutandis*, students' daily schedule gives the impression of a regimented, exhaustively planned, and constantly supervised day. While idealized, as I'll discuss in a moment, the schedule presented above is not a complete departure from the facts that constitute a child's day. For new students, the length and regimentation of the school day is a difficult adjustment.[49] Alicia, a recent arrival at Winterhill, offers her opinion: "I don't like that we have such a long day. [. . .] well, maybe, they could shorten classes to 30 to 35 minutes. And

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47. Simon's classic definition of an organization: "Pattern of communications and relations among a group of human beings, including the processes for making and implementing decisions." Herbert A. Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations*, vol. 4th (New York: Free Press, 1997).

48. What is produced in the table is an annotated version of what is given to parents and staff. Official points are italicized. Annotated (in brackets) using house-parent interview on official guidelines. a66_cottage_1

49. "For me, when I first came here, I didn't really care. Because I'm used to doing things by myself. Learning things by myself. I had a whole 'I didn't care' attitude, and I didn't want to be here. Now I feel like, 'I can be here,' because it's almost end of the year, I'm almost in high school. It's, yeah. I'm getting through it." c1331_middle_3

we always have extra time in class. And we spend a lot of time going in between different places."[50] Other students, usually the more experienced, find the daily structure to be a comforting contrast to what they experience at home.[51]

However, the timetable above is more a myth and ceremony and less an account of the organizational lives of children. In many of my interviews house-parents made a distinction between the idealized, or expected, schedule and the way things are actually run.[52] The organization's orderly self image belies a more disorderly truth: there are constant conflicts in scheduling events, activities often run late or end early, mis-communications abound, and students, teachers, and house-parents are asked to adjust their expectations and actions accordingly.

Winterhill is a small community.[53] Students commonly have brothers and sisters at the school, and recruitment of new students often occurs through the social networks of current students' parents.[54] Additionally, overlapping spheres of play, work, and sleep facilitate a community with thick ties and dense conversation networks.

For one, consider how children seek advice. Students develop close relationships to the adults of the school and these relationships have consequence.[55] While students periodically

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50. c1177_middle_1:45

51. "One of the things I like about Winterhill is that it gives you a place to live. Sometimes its rough at home." c814_middle_0:45

52. Long line of research on organizations that emphasize the distinction between formal and informal ties and the strategic use of standard operating procedures. See generally Martin Kilduff and David Krackhardt, *Interpersonal Networks in Organizations: Cognition, Personality, Dynamics, and Culture* (Cambridge, New York: Cambridge University Press, 2008); John W. Meyer and Brian Rowan, "Institutionalized Organizations: Formal Structure as Myth and Ceremony." *American Journal of Sociology*, no. 2 (1977): 340.

53. "Everybody knows everybody. Everybody is in each others' business." M_6. Staff suggest something similar.

54. a21_admin_notes. [A few staff preferred that I not record the conversation and asked me to take notes instead.] These networks range from fellow church-goers to family friends.

55. "One of my happiest moments of the last year was joining the cottage I'm in now. Mr. [Washington],

attend life-skills classes, talk with their case manager, or receive feedback from house-parents and teachers, much of the more difficult daily issues are addressed through informal advice networks. Conversations after class, before school,[56] and during down-time in class are repeatedly mentioned by students when describing their support structure at the school. Moreover, these relationships don't neatly fit on the formal organizational chart. Students don't evenly divide their attention among teachers, nor do their current teachers and house-parents exhaust the adults they turn to for advice.

Conversation and advice ties operate alongside classroom instruction to reinforce or disrupt curricula. "When am I going to use this [referring to math worksheet]?" "It doesn't matter. When you're older you'll be able to make the decision for yourself."[57] Moreover, connections to these adults become ways for students to express frustration, receive validation, and provoke a response. Concerns are communicated upward, and sometimes routines are even adjusted. One often cited example among teachers is when a student during the previous school year turned a concern about the dress code policy into a formal petition after asking the social studies teacher for advice. On a more basic level, advice networks are a way students bring attention to salient issues in their lives. In the absence of a mechanism to address smaller grievances,[58] these relationships are a central avenue for exercising voice.

Children also find ways to resolve issues, build culture, and communicate news among themselves. For one, the social and spatial regimentation of the school is easily circumvented.

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my house-parent, he acts like a dad. He's seems like my father. It's important to me because I don't have a father in my life." c143_middle_18

56. "Ms. [H] is awesome. She talks to us about other stuff, family issues. [. . .] usually in the morning, when she has time." c539_middle_12

57. fieldnotes_2014May05

58. There is a grievance process, but it is only used for major concerns like harassment and violence.

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As Cam, a 7th grader, notes in a casual conversation with her math teacher: "I know you teachers talk about us in the [teachers'] lounge. [We talk] about you guys too. Only, we don't got no lounge." Bathrooms, for example, double as spaces for discussion; many teachers are unwilling to go into the student bathrooms and students know this.[59] Children will take time during class to go to the bathroom with the aim of meeting with other students to chat about the day. A seventh grader explains, "Well, stuff that happens in the bathrooms, like, we [talk] about how the day is going. What teachers have been like to you. If you got a detention or centrals or something."[60] This also applies to many cottages. Many houseparents don't go into the bathrooms so students use those spaces to talk to each other more freely.

Another strategy students use is to make use of large spaces where teachers are out of earshot. In the library, cliques will congregate and chat, crouched, behind the stacks under the guise of searching for a book to check-out. Likewise, gym is repeatedly mentioned as a social center. One 6th grader elaborates: "Gym is where *anything* can happen. Unfortunately. Anything. Let's say you're dating somebody. You can show that more in gym. If you end up getting into a fight, *nothing* is going to happen. You have the most freedom in gym. [...] We're not monitored very closely."[61] The gymnasium is loud, particularly during unorganized free play, and students use that opportunity to talk with their friends and spread news.[62]

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59. CB: "Where on campus do you feel like you can most be you?" S: "My bedroom, or the bathroom." CB: "The bathroom?" S: "Because no one checks on us in the bathroom." c539_middle_4.

60. c33_middle_12:30

61. c1056_middle_6:30

62. "Gym. I feel like it's loud and a bigger area. Lot going on. People are playing lots of different games. Lot of free time. You can just talk with your friends. It's mostly open." c858_middle_6:15

The more bold will manipulate hall passes, or conflicts in scheduling, to leave classes. One student likens this kind of rule bending to planning a heist: "well, first of all. All that you need to know, all you need is common sense. If you have common sense, 10 percent of the time you'll get caught, 90 percent you'll be free to go. [...] Like trying to rob a bank with an easy [security] system. Let things fall into place. Watch what these houseparents do. [...] I got to find out houseparents' schedules. Sometimes you need to be quick. Like how you're observing, Mr. Chris, that's what we do."[63] While boastful, the substance of the claim resonates with other accounts given by both other students and teachers. The sum of these adaptations, innovations, and manipulations is a kind of counter-public, formed from, but not reducible to, wider organizational structures.

While some students think they are bending the rules completely "on the sly," teachers often know it is happening, and some even make use of it. Paraphrasing a conversation with one teacher: "many of the teachers and I have an understanding. Sometimes students are being too difficult or disruptive, some just need to blow off steam. So they end up coming here. It makes it easier for them [the teachers], and they appreciate it."

Communication, in short, flows in a variety of ways throughout Winterhill – sometimes by design, sometimes by accident of architecture, and sometimes by clever adaptation. Importantly, many students are savvy organizational actors; they know how the school works, and they are aware of how their peers are related. In the words of the science teacher, Ms. O'Malley, "we're only here from 7:30 a.m. to 4 p.m., five days a week. We [teachers] are at a disadvantage. [The children] are here all the time, and they often know the routine better than we do."

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63. c814_middle_9

Local knowledge allows students to bend the rules, break them, and sometimes even re-make them. For example, students' internet use is filtered and, usually, strictly monitored. However, many of the children have learned to bypass this restriction. Some have found technical workarounds, others have discovered that some devices don't have filtering software, and others have discovered the filter password the teachers use.[64] Moreover, a sensitivity to the varying tolerances and sensibilities of staff provides opportunities for self-expression. Girls learn where and when they can wear shorter clothes, when they can curse and swear, and when they can get away with passing banned materials.[65]

While students adjust and adapt to the rhythm of life at Winterhill, the definition of their situation is often contested. As I'll describe in a moment, opposition ranges from subtle challenges to authority to active resistance to less overt subversive behavior. Child opposition is often described as acting out, misbehavior, or simply "being naughty." The vast majority of staff reference culture (home environment, student culture) as the source of oppositional behavior. Consider the following interview answers:

1. "This stage of their lives, I think it's a matter of developing their place in society. Finding their niche. Are they a class clown? Do they want attention? It's about becoming acceptable to their peers."[66]

2. "I think it's usually interactions with other students. [. . .] With boys it's sports, with

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64. S: "Certain networks, certain wifi networks don't block certain things. And there are other websites out there that allow you to get on those social media networks without the school blocking them. [. . .]" CB: "Do most students know?" S: "Yeah, for sure, a lot of kids know." c1441_middle_4:30

65. c1012_middle:13

66. a41_teach_5

girls it's social drama."[67]

3. "I think that it has a lot to do about what goes on at home. The expectations of the parents. If the parents aren't willing to reward or enforce expectations for school work, there is no reason for students to put in the time and energy."[68]

4. "If you see your mom curse the check-out lady at the [grocery], you know, that's what you see. Mouthy parent, mouthy kid."[69]

More generally, staff narrate oppositional behavior at Winterhill as a three-way struggle between staff, representing the classroom or cottage-level implementation of various institutional curricula; other children, representing the social relations, cultures, and roles that constitute the child 'social system'; and home, representing knowledge of, and access to, alternative norms and organizational forms. Opposition, in this view, is a kind of remainder left by the exercise of pedagogical authority. Child resistance is evidence of a partial, or incomplete, cultural victory.

Consider the out-of-earshot spaces where children share grievances about the school and staff – bathrooms, gym, and dorm rooms after bed time. These spaces provide a kind of infrastructure for public expression, children's culture, and the negotiation of social ties. They are spaces carved out of a planned community where children have more room to maneuver. I don't mean to hold up these spaces as uniformly positive. Navigating social ties need not imply the forms of peaceful dispute resolution that deliberative democrats

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67. a65_teach_7

68. a77_teach_4

69. a42_teach_4

laud. Children in one cottage, for instance, were found routinely fighting after quiet hours to resolve inter-personal conflicts lingering from earlier in the day.[70]

James Scott usefully characterizes this kind of organizational communication as part of the "infrapolitics" of subordinated groups. This politics is characterized by the prefix 'infra' in two ways: first, as in infra-rays, light beyond the visible spectrum, and second, as in infrastructure, the load-bearing part of an edifice. Joining the two parts into a single definition, infrapolitics is the "circumspect struggle waged daily" by subordinate groups that provides the structural underpinning of the more visible politics in which social scientists and theorists generally concern themselves.[71] Importantly, this infrapolitics, itself, is shaped by various structural relationships. As we've seen above, these range from social relationships between children and others, to relationships between children and various cultures and systems of knowledge.

Daniel McFarland usefully distinguishes between passive and active resistance. He writes, "Passive resistance is a tacit, indirect subversion of the normative codes of schooling and is at most an expression of malcontent and critique. Active resistance is more serious since it openly undermines the normative codes of schooling and attempts to posit a new framework of interaction on the situation."[72] Examples of passive resistance that parallel McFarland's definition are littered throughout my field notes:

1. When a student was asked to turn around in seat, he sits up straight in an exaggerated manner, and makes a 12-point shuffle until he is facing forward.

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70. Account taken from Winterhill's disciplinary incident files.

71. James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990), 183–84.

72. McFarland, "Resistance as a Social Drama," 1263.

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2. A student was given permission to disassemble presentation boards from the school science fair. He skips across the room and sings "liiiiiike a wrecking ball!" in a mocking falsetto and kicks a hole in the cardboard.[73]

3. Student twists hall pass in hand, wanders around room. Looks at teacher. "Please sit down." "I need to stop by the office." "No, sit down!" Continues wandering around the room. "Fine, go." Once the student is in the hall, he makes a basketball shot gesture to his friend still sitting in class then walks on. [Alluding to fact he is actually going to go to the gym.]

4. Teacher: "Please get back to work, Dina." Under Dina's breath, "there she goes, hissing at me again."

5. The following exchange in a session on budgeting in a life skills class. Teacher: "Remember, time is money. You need to look at where you're putting your effort each day." Student: "Yeah. Time is money, . . . but money also makes time!" [Boys in the room laugh.]

These acts are transgressive in feeling because in them someone is asking for something she ought not to; someone is admitting to impulses and ideas authorities would rather not have considered. These acts are forms of passive resistance because they draw attention to the illegitimacy of school affairs, but do not call for their transformation.[74] They allude to children's culture and the social ties on which that culture is built.

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73. Reference to a song by pop singer Miley Cyrus.

74. See McFarland, "Resistance as a Social Drama."

While I've only presented a few examples, these acts express an unease about the proper role of children, about what constitutes appropriate child knowledge, speech, and action. Mocking conformist behavior (the 12-point shuffle) and using humor to reframe the meaning of classroom discussion ("money makes time") are just a couple of the techniques used to call into question the legitimacy of the school's interpretation of childhood. Passive resistance increases the "friction of appropriation"[75] of children's preferences, abilities, and culture. Passive resistance creates room to maneuver, but doesn't halt classroom and cottage instruction.

One situation I often witnessed is a teacher make a request or assign a punishment, a student mumble something under his breath (often loud enough so even the teacher can hear), and the teacher express disapproval but not acknowledge what she (most likely) heard. That is, teachers would often protect the stability of the definition of the situation by not recognizing open defiance by students. Take another situation. A new student, Anika, spent the entire language arts period doodling instead of doing her assignments. The teacher had, unsuccessfully, tried to get her to engage with lessons over the previous week. Rather than scold Anika, after class the teacher complimented her on the doodle, then put the drawing up above her desk. In an interview, the teacher explains that her goal was to redirect the student, to "get buy-in," because previous strategies didn't work. In both situations there is an implicit recognition that there is a bigger opponent than any one student: the utter disintegration of order itself.

Sometimes, of course, the definition of the situation completely breaks down and there

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75. James C. Scott, *Two Cheers for Anarchism: Six Easy Pieces on Autonomy, Dignity, and Meaningful Work and Play* (Princeton: Princeton University Press, 2012), 208.

is active resistance. Consider the following excerpt from my field notes:

23 Apr. Period 8. The sixth grade students are talking as they come in the room. The atmosphere is lively, a couple of students are dancing and skipping. This period is "Life Skills" and is a combined session with the entire 6th grade class of 23 students. There are two teachers for this period, Mr. Jay and Ms. Wilson. The lesson is on nutrition and the dangers of eating too much fast food. As the students are sitting down, one of the teachers sets up the video. The other tries to calm the class down: "Everyone, please sit down!" Most of the students are seated, but a few are still standing and chatting. There is still a lot of low-level noise in the room. "Malachi! Go to your seat!" Under his breath, but loud enough that I can hear from the corner of the room, Malachi turns his head side and says, "Bitch." Angry and sulking, he goes to his seat. The volume of casual chat in the class continues to rise. The other teacher, Mr. Jay, "Quiet! We're starting the video." Students look up front but continue to chat, only temporarily lowering their voices. A minute later, Ms. Wilson calls out two names: "Tom, Naomi. No gym tomorrow!" She then writes their names on the board. "Ella, merits for you for sitting quietly." Within a few minutes, two more names are added to the board. "Mark! Sit down!" Mark stares back, then sits on a counter nearby. "That's not sitting, put your butt down." He walks by his chair, then sits on the ground instead. Ms. Wilson gives him a harsh stare. He then turns towards the video, as if he's watching. By the time John's name is added to the board, he barely looks up, shaking his head, and continues chatting with his

friends. The period, which is the last of the day, is almost over. A handful of students are watching the video which, as it turns out, wasn't the intended the video,[76] and the teachers seem to have given up trying to maintain order. They, too, start chatting amongst themselves. Over half the class's names are on the chalkboard by the time class is dismissed.

Incidents like this are both extreme and rare. Nonetheless, they are significant. Sometimes direct challenges snowball, and the techniques teachers use to secure a particular interpretation of events fail. Here, students were able to redefine the situation and undermine the classroom authorities – in this case, two teachers.

Both passive and active resistance emphasize the fragility of order; they're a reminder that an ideology, liberal or otherwise, requires active effort to maintain. Sometimes the techniques that secure a particular interpretation of events function smoothly, other times there is friction, other times failure. While I've emphasized the behavior of children, similar kinds of conflict can come from other actors and relationships in the school. There are tensions between house parents and the administration, between teachers and house parents, among others. One could tell parallel narrative of staff working, shirking, and sabotaging. There is a symmetry between the roles of children and adults at Winterhill: each occupy what I described earlier as "substantively ambiguous" roles, and the ambiguities of those roles can have institutional consequences. Beyond classroom or cottage disruptions, there is suggestive evidence that child resistance can act back on wider organizational processes and

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76. The video was about the history of fast food. As a consequence, most of the conversation among the students was about how much they liked fast food and how they were looking forward to having a cheeseburger over the weekend.

procedures.[77] Consider two simple examples: communication and movement.

First, communication. There are formal mechanisms for children to voice concerns at Winterhill. When serious issues arise children can bring grievances to their houseparents, their teachers, or their case manager. The school also regularly fields informal surveys, some of which are anonymous and all of which are confidential. Students can write if they feel bullied, for example, or if they feel mistreated by staff. Those concerns are assessed by the severity of the accusation and the credibility of the claim, then a review process is a set in motion. The often unspoken worry undergirding these avenues for student voice is sexual exploitation. Children are subject to a wide range of controls at the school and those controls produce unique vulnerabilities. The general solution to potential abuse is decentralized monitoring, to make sure children have means to speak up when they fear for themselves or for their peers. This comes at the cost of control, however. Voice provides avenues for strategic action, and children use worries about sexual impropriety to constrain (in particular) house parent behavior. One of the reasons why dorm bathrooms are relatively unsupervised is that house parents are loathe to risk being accused of inappropriate behavior.[78] Moreover, communication between adult men and young girls is more likely to be in public (both house parents present, house parent around other children, or house parent and a supervisor). In short, the threat of a false accusation adjusts routines of communication and observation in the school.[79]

Second, movement. As noted above, Winterhill emphasizes orderly movement between

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77. I say suggestive because a more full demonstration would require a larger analysis of change over time.

78. In an interview with one houseparent, she mentioned her husband was accused of watching the children in the shower. As a consequence of threats like these, the houseparents adjusted their daily routine, particularly around the bathrooms.

79. Not all accusations need be false, of course.

classes, cottages, and various activities: moving in unison, in uniform, in relative quiet.[80] Above I noted how children move in unauthorized ways – sneaking to the gym, skipping band, manipulating hall passes. In themselves, these actions don't imply an adjustment to wider standard operating procedures. However, student opposition, particularly the threat of active resistance, has lead to persistent, shared adjustments on the part of both staff and students. Sending students to the dean, the central office, or allowing children to get away with going to gym on the sly functions as a release valve for bubbling classroom pressure. That is, teachers and students use these non-sanctioned (or only partially sanctioned) paths to avoid conflict. While not officially authorized, these movements are routine and students and teachers alike adjust their behavior and expectations in light of these pathways.

Discussion

Winterhill is unlikely to evoke a consistent response. Some will express full-throated support. Many will see school discipline as too harsh and the constrains imposed on self-expression as too rigid. Still more will disapprove of this or that practice, but affirm the general spirit of the education provided. Among potential responses, I find two objections particularly clarifying: liberationism and gradualism. While I argue both objections ultimately fail, they fail in revealing ways. Each asserts that liberal paternalism, the claim that present compulsion is a precondition of children's subsequent ability to choose, is inconsistent with a commitment to liberal democracy. Each claims to offer an alternative, more internally consistent view. And each, I ultimately suggest, brings into relief dimensions of political

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80. Again, like the timetable described earlier, this is idealized. In practice, there is no shortage of disorder.

conflict obscured by liberal accounts of child governance.

Objection One: Liberationism

One potential response to the paternalism of Winterhill is a call for child liberation.[81] The line between adult and child is overdrawn, and everyone – regardless of age – is entitled to a full schedule of liberty rights.

One version of the argument proceeds as follows. There are many ways in which the capabilities of children are conceived, and those ways are intimately tied to historical circumstance. While biological immaturity is a universal and natural feature of human groups, ways of understanding this period of human life – the institution of childhood – varies across cultures.[82] In his influential *Centuries of Childhood*, historian Philippe Ariès argues that the concept of childhood as a distinct period of human life did not exist in the 15th century. Likewise, "adolescence" and "youth" have a relatively recent history.[83] These gradations are not, necessarily, reflections of increasing humanity or understanding. 'Child,' 'adolescent,' and 'youth' are useful to particular professions and to particular interests, and they serve as sites for the production of society-specific meanings.[84] The contemporary disqualification of children is not a necessary feature of liberalism, only a contingent one.

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81. Many reviews of this small literature. For a general overview, see Archard, *Children*. My intention is not to map all variants of the argument, just what I take to be the most significant. The view I'm describing is an amalgamation, not any one particular author.

82. Allison James and Alan Prout, eds., *Constructing and Reconstructing Childhood: Contemporary Issues in the Sociological Study of Childhood* (Bristol, PA: Falmer Press, 1990), 3.

83. The distinct period of life we now call 'adolescence' can be traced to G. Stanley Hall and the rise of developmental psychology in the early 20th century. More recently, others have described the emergence of a new category, "youth," that encompasses the period between adolescence and one's mid-twenties.

84. On the former, see David Rothman's masterwork *The Discovery of the Asylum*. On the latter, see Henry Jenkins's discussion of myth of 'child innocence.' Jenkins, "Childhood Innocence and Other Modern Myths."

The most extreme form of the liberationist view is that there is no reason to presume children are incapable, as the liberal paternal view does. While capabilities do vary, the presumption of incompetence doesn't respect how capabilities work. Taking one strand of this claim, authors argue that the emphasis on competence ignores that incapacity is a social and relational phenomena. Citing John Stuart Mill on women, for example, the features understood to disqualify children – dependence, frivolousness – are a product of a particular form of social prejudice, not intrinsic features of youth or childhood. If we now accept that women are not, to pull an argument from the early 20th century, "child-like" and best suited to the private sphere, perhaps children, themselves, aren't quite as childlike as commonly held. Furthermore, in various aspects of our adult lives we experience incompetence. We confront financial decisions, medical decisions, and legal decisions, for instance, for which we are ill equipped. And what do we do? We enlist the aid of accountants, doctors, and lawyers. We seek out fiduciary relationships.[85] Likewise, holders of the liberationist view argue children can 'borrow' the relevant capacities needed for participation should they, in fact, lack them.[86]

Elements of the organizational politics of Winterhill nicely slide into this view. Children use social knowledge to avoid trouble, find information, and get what they want. Children leverage adult advice networks to overcome information deficits or to resolve problems that can't be remedied within their peer group. They take advantage of imperfect communication

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85. Likewise, Shapiro's solution to the problem of democratic justice for children involves context-dependent fiduciary relationships. Parents and the state are each tasked with securing children's basic interests, and each source of authority over children checks the other. The aim is for children to "be nurtured and educated so that they can become competent adults within the evolving system of institutions." His view is not liberationist, rather, his view fits squarely into what I describe below as the "gradualist" tradition. See Shapiro, *Democratic Justice*.

86. Howard Cohen, *Equal Rights for Children* (Totowa, NJ: Littlefield, Adams, 1980), 56–61.

between administrators, house-parents, and their families at home to constrain staff behavior. Against various tropes of childhood innocence, students often reference 'adult' subjects that range from sex to violence to economic inequality. Children clearly have distinct preferences, and many are not shy about distinguishing themselves from the attitudes of peers, staff, or parents. Moreover, it's clear that there is conflict over the meaning of the category 'child' at Winterhill. A slew of various images underpin various practices at the school (child-as-sponge, child-as-animal, child-as-institutional-citizen, to name a few), and it's not hard to imagine that these images are the product of social prejudice, not some deeper truth about the nature of children. And institutional distinctions among Winterhill's student population – by age, by gender, by ability – certainly are used to extend institutional control.

While plausible, the liberal paternal claim against children's autonomy is deeper than various domain specific incapacities. Children are thought to be incapable of choosing among various ways to increase capacity. Incompetence is understood to be a global, not local phenomenon.[87] Teachers recognize that children are clever, that they are knowledgeable, that they can navigate socially complex, emotionally taxing environments. A reoccurring theme in interviews with house-parents is that children are different from adults not because of an absence of rationality or cognitive ability ("many of our students are better equipped for society than the average adult"), but because of a lack of 'maturity.' Here, maturity is loosely conceived as a combination of experience, cognitive ability, and a consistent and persistent definition of self.

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87. See Robert Noggle, "Special Agents: Children's Autonomy and Parental Authority," in *The Moral and Political Status of Children*, ed. David Archard and Colin Macleod (Oxford: Oxford University Press, 2002). And, if one goes further, to posit a competence to borrow global competence – the result is simply to push the problem a level deeper, begging the question.

In addition, the Winterhill student population consists of children in grades three to eight. This obscures the simple truth that most child liberationist authors are forced to draw a line somewhere between adolescence and infancy, where the difficulties of the 'borrowed' or shared capacities argument become more obvious. While some argue infants have agency, that they interact with (and modify) their environment, the case that differences in capacity and dependence are not relevant to democratic decision-making processes becomes more difficult to plausibly maintain. The result is that the liberationist claim is turned into an argument about the proper threshold for maturity, about where to draw the boundary, and not about the boundary itself.

Objection Two: Gradualism

Under liberal paternalism children are more accurately described as 'becomings,' not beings.[88] Intervention is oriented, and constrained, by the adult a child will eventually become. The liberationist position is that children ought to be treated as present beings with preferences different from their future adult self. The gradualist position, the second response to liberal paternalism, tries to mediate between child-as-being and child-as-becoming. In the gradualist view, as children develop they should have greater say in their environment.[89]

Seeing the strict discipline of boarding schools like Winterhill, advocates of this approach balk. They argue that the aims of such an education are right, but the means are off the

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88. Barbara Arneil, "Becoming Versus Being: A Critical Analysis of the Child in Liberal Theory," in *The Moral and Political Status of Children*, ed. David Archard and Colin Macleod (Oxford; New York: Oxford University Press, 2002).

89. Samantha Brennan, "Children's Choices or Children's Interests: Which Do Their Rights Protect?" in *The Moral and Political Status of Children*, ed. David Archard and Colin Macleod (Oxford: Oxford University Press, 2002); Coleman, "Answering Susan."

mark. The strict, hierarchical governmental structures of the school are out of step with a truly *democratic* education. The core of the argument is as follows. Children's abilities and capacities develop over time, in context, and children should enjoy the maximum feasible level of participation given their particular level of development. The force of children's opinions ought not be strictly consultative, but should be weighted more heavily as they develop.[90] Just as an infant ought not direct her education, it also makes little sense that a 'responsible' 15 year old has no say in her education and general care.[91] Participation not only increases a child's future competence in democratic politics, but children are *owed* appropriately participatory contexts. Anything less produces a democratic deficit. For many this argument has a strong intuitive appeal, and many of the early advocates for free schools hold variations of this view.

There are a variety of interesting critiques of gradualism: that participatory environments might not be the most effective way to educate for self-government, that development is not linear, that the transition from child to adult involves both gains and losses, that the gradualist claim amounts to a kind of 'literacy test' for democratic inclusion, that the mature figure that stands at the peak of the chart of development is implicitly a middle-aged white male. All these observations are important, but they sidestep the core conceptual question about voice.

For one, it's not immediately obvious governance at Winterhill isn't gradualist. Many of the desired elements of gradualism are readily apparent at the school. With increased age comes increased classroom and cottage privileges, along with increased responsibility. More-

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90. This is, roughly, the principle behind the English House of Lords' Gillick decision ("Gillick competence") celebrated by advocates for children's rights.

91. Coleman, "Answering Susan."

over, while merits and demerits might be an imperfect measure of responsibility, the merit system is precisely designed to scale students' freedom. Those children that demonstrate responsibility have more freedom in how they dress (wearing play clothes on Fridays, for instance) and how they spend their time (unstructured time in cottages). Some freedom, of course, is not *maximum feasible* freedom. However, through appeal to (among other pedagogical authorities) the Teaching Family Model, administrators make the case that students have accrued skill deficits that threaten their flourishing. The source of these deficits, as noted earlier, is usually attributed to resource deficits and a dysfunctional home culture.[92] As a result of these deficits, the bandwidth for school participation is best set narrow.[93] The gradualist view is agnostic about which discourses can or ought to shape the ascriptions of development that, in turn, would determine children's access to participatory environments. As a result, it's unclear on what grounds a gradualist could reject the reasoning of the Winterhill administration.

For another, it's not clear to me that the gradualist advocacy is different in kind from the liberal paternal view. The liberal paternal view broadly authorizes interventions to make children into capable, consenting, choosing subjects. These interventions range from pedagogies based on behaviorism, to cultural traditions, to critical pedagogies. At Winterhill, we've seen a variety of approaches. And while the aim is to provide a united curriculum, in practice techniques and pedagogies are various and sundry: token economy, caught being good, assorted personal teaching philosophies, to name just a few from the narrative above. As I understand it, child participation (at least as envisioned by gradualists) is simply

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92. There is a significant parallel here to debates around welfare policy and poverty.

93. On this point, see Clarissa Rile Hayward, *De-Facing Power* (Cambridge; New York: Cambridge University Press, 2000).

another curriculum. Like parents, and like the state, some other force (here, implicitly, it's developmental psychology) mediates the assignment of participation rights to children. The only wrinkle in the gradualist view is that paternal authority is shared with a professional discourse. However, the logic underlying liberal paternalism itself remains unchanged.

Child politics

Children experience a profound lack of fit between themselves and the wider world. This lack of fit can be literal; the size of furniture in restaurant, the height of buttons in an elevator. And this lack of fit can be metaphorical; the stress of living in a neighborhood with pervasive gun violence, the cognitive demands of navigating a train station. Places like Winterhill are precisely designed to address this lack of fit. To adjust and to adapt to the needs of children *as* children.

What do the liberationist and gradualist objections reveal? An impasse. On the one hand, the presumption of *global* incapacity is the core feature that distinguishes the status of child and adult in the liberal paternal argument. And this incapacity is not reducible to a claim about rationality. On the other, this presumption is defined by systems of knowledge that are neither context-independent, nor liberal.[94] The period of life we delimit by this presumption, childhood, is defined as much by ideology as by biology. While some of these systems of knowledge have a clear institutional definition, the Teaching Family Model for example, others are not systematically articulated, such as the folk understandings of youth resistance held by staff. Precisely where it is needed most, liberal paternalism, even in its

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94. While, for example, the special education teacher's use of neuroscience to structure how demanding she makes her assignments might strike many as appropriate, it's important to remember that neurology as a system of knowledge is not, itself, liberal.

liberationist and gradualist variants, fails to give normative intuition or imagination to these social dynamics.

Faced with the reality of organizational politics, and unable to rely on the illusion that ontological claims about childhood fully justify liberal paternal rule, another analytic perspective suggests itself. Instead of trying to mark the precise boundaries of the category 'child' (under what conditions is someone rightfully treated as a child, what legal criteria ought to be used to assess maturity), perhaps we ought to ask what it means to be self-governing in a context where individuals are constantly entering, exiting, and revising the categories that define childhood. That is, to treat competence as a social, not natural fact.

In distinction to natural facts, social facts cannot be reduced to the sheer physical attributes of the object in question. Social facts are characterized by the collective assignment of functions to phenomena – the attribution of a status – that is both nonphysical and non-causal.[95] Again, this is not to say that social facts are entirely "made up." Observer-independent features of the world (like neuro-diversity and biological immaturity) can and do condition the attribution of a status to an object. It's just that the physical features of the object do not determine or exhaust the content of the fact.

Cast in this light, liberal paternal rule over children begins to look a bit different. Child resistance in particular appears less passive, less like a growing pain or failed program implementation, and more like an active response to the imposition of a social or political

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95. To repeat an earlier example from John Searle, consider a screwdriver: "When I describe it as a screwdriver, I am specifying a feature of the object that is observer or user relative. It is a screwdriver only because people use it (or made it for the purpose of, or regard it as) a screwdriver. The existence of observer-relative features of the world does not add any new material objects to reality, but it can add epistemically objective features to reality where the feature in question exists relative to observers and users." John Searle, *Making the Social World: The Structure of Human Civilization* (New York, N.Y.: Oxford University Press, 2010).

program.[96] Many of the characteristics that appear to stigmatize the children of Winterhill – their attitudes, their dependence, their play, their social structure, their culture, their crude egalitarianism – are not simply marks of 'primitives' before civilization, but can be seen as adaptations that evade, disrupt, and, at times, reinforce a particular kind of liberal state making project.[97]

The contest to control children's behavior at Winterhill can be characterized as an ongoing, low-wattage, battle. The conflict ebbs and flows, intensifies and fades; lines of movement are gained, lost. Not only is there conflict among custodians (teachers, staff, parents) and various systems of knowledge (caught being good, developmental psychology), but there is also contention involving children themselves. Far from being omnipotent rulers who have crushed all signs of rebellion, the staff of Winterhill are engaged in a continuous struggle to maintain the ideological order – and it is a struggle in which they frequently fail. Children resist the definition of their situation and, in more dramatic instances, attempt to supplant it through appeals to different normative orders.[98] Children and adults alike at Winterhill make claims about children's interests, and this leads to individuals and collectives at the school to mobilize on behalf of those interests.[99]

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96. This reading has an affinity with what James Scott calls an 'anarchist squint' at history: "What I aim to show is that if you put on anarchist glasses and look at the history of popular movements, revolution's, ordinary politics, and the state from that angle, certain insights will appear that are obscured from almost any other angle." Scott, *Two Cheers for Anarchism*.

97. Paraphrasing James Scott's discussion of Zomians. James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009).

98. See McFarland, "Resistance as a Social Drama."

99. One could also use the social movement scholarship language of contentious politics. This form of politics "involves interactions in which actors make claims bearing on someone else's interests, leading to coordinated efforts on behalf of shared interests or programs, in which governments are involved as targets, initiators of claims, or third parties." Charles Tilly and Sidney G. Tarrow, *Contentious Politics* (Boulder, CO: Paradigm Publishers, 2007), 5.

The afterimage left by this line of analysis is of an odd and under-examined kind of politics around the formation of self-governing, democratic agents. Part of the value in theorizing child politics is that it starts to reveal the ecology of the "negative capability" of young boarders – "the empowerment that arises from the denial of whatever in our contexts delivers us over to a fixed scheme of division and hierarchy and to an enforced choice between routine and rebellion."[100] As individuals, cliques, and collectives, children have distinct styles of communicating, distinct cultures, and even distinct counter-public spaces where they develop, express, and distribute ideas that are not reducible to the interests of their adult guardians or to wider adult society. The children of Winterhill might be situated in a no-man's-land between the pulpit of the pedagogue and pews of full citizenship, but rather than simply resisting or accepting their situation, they often remake it. Sometimes for the better, sometimes for the worse.

Over a half-century ago the radical English educator A. S. Neill raised the possibility that schools, in whatever form, cannot answer concerns of paternalism:

> I once read about a school in America that was built by the pupils themselves. I used to think that this was the ideal way. It isn't. If children built their own school, you can be sure that some gentleman with a breezy, benevolent authority was standing by, lustily shouting encouragement. When such authority is not present, *children simply do not build schools*.[101]

One could even state the claim stronger. Schools are the product of adult imagination; and even if children are full, not token, participants, they can only participate in as much as they

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100. See Unger, *Politics*, 174. Unger takes the concept of negative capability from the poet John Keats.

101. See Alexander S Neill, *Summerhill: A Radical Approach to Child Rearing* (New York: Hart, 1960), 61.

accept the authority of that vision. With Neill, I take the persistent unresolved question at the heart of custodial care of youth to be who governs, and by what right.

CHAPTER 6

CONCLUSION: CUSTODIAL RESPONSIVENESS

The imagination of school architects, and the persistence of the question of 'who governs,' returns us to the questions with which this dissertation began. Despite being excluded from civil society, prisoners, patients, and children are forcibly included into the democratic political order. How can theories of democracy accommodate such a contradiction? And what are we to make of a historical record replete with examples of wards pushing to have their voices heard? This closing chapter contains a few final comments on these questions. I also describe the strengths of my approach, a few weaknesses, then reflect on the normative implications of my analysis.

On Self Government

Over the last three chapters we've moved from the cell blocks of Walpole, to the wards of St. Elizabeths, to the classrooms and cottages of Winterhill boarding school. Each case is distant in time – at least a generation – and while each episode takes place in the United States, each involves a different place, culture, and institutional design. The events of Walpole are, by all accounts, exceptional; the institutional government at Winterhill, decidedly familiar. Compounding matters, in each instance the purpose of custody and the populations in custody appear radically different: punishment, care, and education. Laid before us are snapshots of institutions, seemingly disconnected. What can we possibly learn from such a motley collection of cases? And even if we know more about each episode, do we now know more about the character of the relationship between custody and democracy? I would like

to think that we do.

History is stranger than any fiction, and thinking through complex empirical examples can be an engine for political theorizing. Throughout this text I have treated the relationship between custody and democracy on three general registers.

To start, the micro-histories we've analyzed chip away at a wider, macro understanding of custody. They collectively undermine the sway of what I referred to earlier in this dissertation as the *exclusion thesis*. That is, the tendency to think of custody as fixed, to think of custodial populations as bounded groups outside the scope of civil society. In the second chapter I argued that the tendency to treat the line between competent and incompetent as pre-political is a mistake. It is a misdescription that ultimately has distributional consequences. In different ways, each case highlights the organizational struggle to define that line. The NPRA argued for a continuity between the prison community and the street, and claimed that they, too, were workers entitled to basic labor protections. The prison political order established during the strike was an attempt to put those principles into practice. At St. Elizabeths both patients and administrators claimed 'democracy' was good therapy, to different effect. And while the ideal of liberal paternalism has strong intuitive appeal, it papers over contestation about the status of children in democratic politics at institutions like Winterhill boarding school.

In describing the limitations of the exclusion thesis, I forwarded two core claims: the first concerns 'closure,' and the second concerns narrative. I suggested the problem of closure means that porousness is an intrinsic feature of the attempt to draw a boundary around competence.[1] We've now seen a few of the forms that boundary crossing can take, ranging

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1. You'll recall that the "problem of closure" means that there is no decisive criterion for membership,

from outright rebellion to children getting by 'on the sly.'

At a different register of analysis, I've highlighted the significance of narrative conflict. In each case there is a link between narrative forms and forms of organization. It's not a straightforward assessment to describe a particular form of organization, custodial or otherwise, as more or less 'democratic.'[2] Whether a particular form is recognized as democracy enhancing or detracting is a retrospective judgment that, itself, is a site of political struggle. This was on display in the conflict between the "liberal" and "radical" narratives at Walpole, the struggle over "democracy in therapy" and "democracy as therapy" at St. Elizabeths, and the contest over different images of childhood – child-as-sponge, child-as-innocent, among others – at Winterhill.

Closest to the ground, the third register of my analysis has been organizational politics itself. While remaining agnostic about the virtue of any given form of custody, I've argued throughout this text that the normative project of deepening democratic commitments rests on the *possibility* of self-government. Drawing from a number of 'institutional theorists' of democracy, I've pointed to organizational design as a key place where possibility is defined and where democratic values can be mixed, molded, and fired. NPRA rule at Walpole, patients groups at St. Es, and adolescent cliques at Winterhill collectively highlight the critical role of institutions shaping civic competence and general capacity.

What have been the strengths and weaknesses of my approach? Let's start with strengths. On the one hand, my analysis has avoided the weaknesses of a strict constructionist account

the line marking the category is essentially contested.

2. In discussing the work of David Miller in Chapter 2 I noted that democratic gains and losses are internal to a particular theory of democracy. This means, for example, that including more people into the polity is not universally a boon to community self-government.

of incapacity.[3] The 'incapacities' at the base of the custodial relationship, I've suggested, can be ontologically objective phenomena.[4] This came out most clearly, for example, in the critique of child liberationism in Chapter 5.[5] Even so, however, the presumption that children or the mad cannot participate is defined by systems of knowledge that are neither context-independent, nor intrinsic to a particular theory of democracy. We're left with a significant gap in the attempt to legitimize disqualification.

On the other, my account goes farther than the traditional approach of describing collective action by those in custody as mere remainders, or rounding errors, on an otherwise sufficient theory of democracy. A clear lesson from the episodes described in this dissertation is that it is a mistake to treat organizations as "dumb pipes,"[6] simply channeling information, resources, or skills among their members. Organizational relationships can make, and remake, the relevance of a given incapacity – say, schizophrenia – for civic participation. In a phrase, the relationship between custodians and their charges is embedded in a complex *organizational ecology.*

That ecology, in part, consists of what I described earlier as "a strange kind of loop." In each instance we have a generative relationship between the organizational processing of ward claims for voice, and the democratic processing of the custodial organization itself. Where

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3. See, for instance, Tom Shakespeare's work on the "social model" of disability.

4. Again, the category 'ontologically objective' comes from Searle. The account given here, in the context of disability, is broadly consistent with Elizabeth Barnes's "value neutral model." Value neutrality, for instance, does not require denying the bad effects of particular disabilities. "Sure, *some* of the bad effects of disability are caused by social attitudes and social prejudices. But at least for many disabilities, where would be things about them that were difficult or unpleasant even in an ideal society." See Elizabeth Barnes, *The Minority Body: A Theory of Disability*, Studies in Feminist Philosophy. (Oxford, U.K.: Oxford University Press, 2016), 78ff.

5. The argument for ontological objectivity is more complex in the case of madness, and probably least persuasive in the case of criminality.

6. This term is from the networks literature, not mine.

one might expect to find fixity, totality, and determinism, we see ambiguity and revision. What's more, we see custodial institutions that are constantly shifting; both pressured from above (shifting state policy, for example) *and* from below.

Let's briefly review each case in turn.

Walpole. While the Walpole moment was exceptional, the individual conditions that enabled the inmate regime were not. Solidarity, as we saw, could not be dismissed as fear of inmate retaliation alone. More than the prevailing zeitgeist – the death of George Jackson, Attica – there was a specific set of experiences of protest that inmates, or at least a significant subset, shared. This spirit of togetherness, of course, was mixed with something foundational to the prison society: the convict code. The result was an odd kind of civic republicanism. While this prison order had exclusions of its own, along with other quirks, it became familiar and legitimate, at least to the inmates of Walpole.

Even after the prison was re-taken by prison officers, the truce persisted for months. When one of original brokers of the truce escaped from prison, Walpole again began to descend into violence. It's no surprise that a political order like this was fragile. However, in the final analysis 'punishment' was not simply a set of tactics strategically appropriated by inmates. Punishment became a means to express an alternative vision of community membership.

St. Elizabeths. In broad strokes, the case study of Howard Hall describes the institutional mechanisms that made it possible, made it reasonable, to include the mad in ward governance at St. E's in the middle of the century. The informal, patient-driven innovations that emerged out of Abrahams's original group therapy intervention were institutionalized by the hospital administration. Bolstered by administrative needs (staff shortages, efficiency), intellectual

fashion (the rise of psychoanalysis), and psychiatric authorization (deliberation as reality testing), patient self-government groups thrived. The unruly and the unmanageable, the mad, became governable in a new way. Patient speech and action became legible not only to various professions within the hospital, but also to fellow patients. While multiplexity created the conditions of possibility for self-government, it also, as we saw with the Patients' Federation, created the fault lines that lead to its demise.

Winterhill. Unlike Walpole and St. Es, Winterhill boarding school appears more mundane. Borrowing language from Roberto Unger, I described the staff and students of the school as occupying "substantively ambiguous" roles in the formative contexts in which they were embedded. As discourses ("caught being good"), management techniques (token economies, the "teaching family model"), and cultures steeped through the organization, they were absorbed and remixed by staff and students alike. As we noted, these practices were meaning-laden. And the 'orderliness' of the institution – think of the daily time-table presented in the previous chapter – was more a myth and ceremony than an empirical description of the children's day.

While the student population of Winterhill largely comes from the social margins, the organizational structure and wider logic of rule is shared with its more elite counterpart.[7] That wider logic is what I called 'liberal paternalism,' and in turning to the organizational politics of the school we were able to understand a bit more about the ecology supporting

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7. Khan's work on St. Paul's is an interesting comparison case. Even within paternal regimes, subtle hierarchies can emerge. As Khan writes, "The aristocratic marks of class, exclusion, and inheritance have been rejected; the democratic embrace of individuals having their own fair shake is nearly complete. Differences in outcome are explained by the capacities of people; the elite have embraced differences among their roles while accepting and even consecrating the hierarchy between them and others. The difficulty with this move, what I have called the 'trick' of privilege, is to make the hierarchy seem a natural rather than durable systematic process." See Shamus Rahman Khan, *Privilege: The Making of an Adolescent Elite at St. Paul's School* (Princeton, NJ: Princeton University Press, 2011), 198.

the ideal itself.

In all, the organizational politics of each institution bears directly on questions of care, interest representation, and, ultimately, the legitimacy of disqualifying their wards from participation. We've seen that custodial relationships are less stable and more fragile than often assumed and that structural ambiguity can be mobilized in ways that reaffirm, reject, or remix custodian-ward relationships.

I've tried to cut my coat according to my cloth. Some will see the scope of my analysis as too provincial to be useful. Still more might argue my claims are too broad, or that they outstrip the evidence I've marshaled. By focusing on edges, on the episodic and the exceptional, my primary ambition has been to unearth anomalies, highlight flawed assumptions, and offer plausible alternatives to the dominant paradigm. The claims I've made here undoubtably require more empirical investigation to answer questions about their general applicability.

What's more, over the course of these pages I have likely overemphasized the unity of the broad category of 'custody.' As with debates around the category of 'disability,' the term is often gerrymandered to serve the interests of particular parties. As I argued in the first chapter, however, a firm definition is both unnecessary and can actually be counterproductive. One needs only a definition strong enough to assist the machinery of one's theory. A focus on 'custody' avoids cabining potentially informative comparisons of populations that share – along an number of important dimensions – structurally analogous positions.

On the whole, I believe the strengths of my analysis outweigh its problems. Minimally, it gives a new set of assumptions and premises from which to challenge and rectify the old ones.

And at its best, it offers a new domain for democratic philosophy and a set of tools to explore that domain. Throughout the text I've moved, sometimes uneasily, between empirical and normative concerns. In these last few pages I'll state more clearly what I understand to be the normative significance of my analysis.

Custodial Responsiveness

The finding that civic capacity is a social, not natural fact has normative implications in addition to empirical ones. Once disabused of the reifications of the exclusion thesis, and once convinced of the key role of custodial institutions in shaping civic competence, the next step is less clear. The larger problem I've outlined is something like 'fixity,' the tendency for existing arrangements to consolidate around a given border or set of categories. What would it mean to have custodial organizations fit for a world in which the borders of democracy are understood to be in flux?

Not only are we born into radical dependency, but we're also thrown into complex, overlapping institutional arrangements. At any given time there are parts of those arrangements that are "up for grabs" and there are parts that are resilient to attempts at revision. Custodial organizations are no exception. The PAG in Howard Hall, for instance, could not have emerged even five years earlier.[8] And it's unclear, prospectively, which parts are which.[9] Compounding difficulties, there is little about organizational novelty, maintenance, or destabilization that appears 'law-like.' Routine and regularity, at best, are a function of time

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8. Beyond the spark of the intervention by Abrahams and the kindling of the rise of psychotherapy, the war required the hospital be run in a way that blocked experimentation and reform.

9. Here, I have in mind Roberto Mangabeira Unger, *Politics: The Central Texts* (New York; London: Verso, 1997), 230.

and scale.[10] Furthermore, even if those constraints are overcome, pushing a particular technique, say group psychotherapy, or privileging a particular form of custody, perhaps foster care over residential schooling, as more consistent with the ideal of self-government is fraught with analytical difficulties. One of the largest of these difficulties, highlighted by the previous chapters, is how to imagine a custodial arrangement that advances the normative project of self-government *without* repeating the errors of the exclusion thesis, without succumbing to a "false belief in necessity."[11]

As a start, we could begin to think about *responsive* custodial institutions. At the highest level of generality, a responsive custodial institution is one that builds civic capacity, treats limits to participation as provisional, and experiments with mechanisms for soliciting voice. The ideal of custodial responsiveness, like any ideal, is a response to a specific question within more general ones. For me, the crucial motivating question is how custody might be reconciled with the ideal of democratic self-government.

Custodial institutions, and the idea of *parens patriae*, has been the main way liberal democratic societies have managed the worst off among their citizens and the exclusion thesis has, often implicitly, justified broad forms of civic disqualification. Partitioning the political world, I've argued, emboldens a kind of authoritarian managerialism in custody that erases concerns over self-government.

There are, of course, alternatives. But the facile answers don't seem to get us very far. Include everyone. Collectively determine the boundaries of the demos. Turn to science

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10. Consider Padgett and Powell's memorable line: "in the short run actors make relations, but in the long run relations make actors." See generally, John F. Padgett and Walter W. Powell, *The Emergence of Organizations and Markets* (Princeton, N.J.: Princeton University Press, 2012).

11. This is Roberto Unger's term. See Unger, *Politics.*

to define limits of competence. Each of these, we've seen, fails in particular ways to give a compelling reply that respects the intuition behind self-government, the desire for democratic legitimacy, and the very real need for custodial care.

Civic republicans have focused considerable energy on the possibility of developing systems that profit from citizen participation in public affairs. In addition, others with a more capacious understanding of 'public affairs' have extended a similar imagination to the workplace and the family. The normative ambition to create responsive forms of custody, ideally, would bring the same republican verve to places like prisons, schools, and hospitals.

In the context of the criminal justice system, this could entail reforms as basic as reimagining grievance systems in prisons,[12] as controversial as voting behind bars, as complex as integrating restorative justice practices into court and parole proceedings, or as radical as participatory budgeting in community corrections. Trusteeship means little when the structure of custody neither facilitates ascertaining the interests of wards, nor addresses violations of those interests. What makes these 'responsive' is that they push the boundary of collective decision-making, and that they experiment with different mechanisms to include the voice of wards.

However, there is a clear problem with making the boundary of civil society (to borrow Unger's phrase) "up for grabs": the inertia in a given system is not, by necessity, towards greater inclusivity or greater autonomy. An ideal of custodial responsiveness might, in fact, entail a more closed institution than one premised on another criterion – for instance,

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12. Grievance systems, for example, played a part in the lead up to the Walpole rebellion. After Attica an inmate council was instituted, but it was viewed by inmates as a potemkin form of representation. Its rejection helped galvanized an alternative means to exercise voice: the NPRA. More broadly, grievance systems are situated at the intersection of rights culture rhetoric and a wider administrative 'carceral logic.' See generally Kitty Calavita and Valerie Jenness, *Appealing to Justice: Prisoner Grievances, Rights, and Carceral Logic* (Oakland: University of California Press, 2014).

Barber's 'biological humanity.' Without another value, without some anchor in a value like freedom or autonomy, one might wonder what advantage a non-foundational, responsive approach to custody would entail.[13]

As I see it, this is a feature and not a bug. Responsiveness, here, is about forms of custody that complement democratic politics. That means at one time, yes, the number of participants or avenues of participation may contract and, at another time, they might expand. But the process is an open-ended experiment, a recognition of epistemic humility. Openness respects the diversity of democratic values that emerge and evolve in particular polities.

In this sense, the source of exclusion is also the biggest obstacle to its solution. We're horrified by accounts of mistreatment in mental health facilities, overcrowding and violence in prisons, and sexual abuse of children in residential facilities or foster care. However, some-

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13. There are two alternative positions, or two extremes, that I don't find particularly compelling.

As I noted earlier, conditioning inclusion on humanity comes with its own set of issues. To begin, there is a case to be made that politics both precedes and exceeds humanity itself. That politics is not a uniquely human activity, and that biological humanity, itself, might exclude wider questions of ecology and animal rights for instance. See Kennan Ferguson, "What Was Politics to the Denisovan?" *Political Theory* 42, no. 2 (2014): 167–87. Furthermore, and more central to the arguments I've offered in this dissertation, is that inclusion is not universally a 'democratic gain' nor is it a safe assumption that all potential parties in a given dispute can be known at a given time. As we saw at St. Elizabeths, rationality and agency can be an emergent property of patients working as a collective. Rooting the boundaries of civil society in ontology, however well intentioned, reproduces many of the pathologies of the exclusion thesis.

The second position is, in essence, Roberto Unger's position in *Politics*: the idea of negative capability should be a basic ordering principle for wider institutional arrangements. There is quite a bit to find appealing in this approach, analytically. The rejection of social 'necessity' and the resistance to fixity are particularly appealing. Among the virtues of destablization is that it can disrupt entrenched interests and using negative capability as a basic ordering principle seems to respect the idea of human agency. But destabilization, of course, also has its vices. Unger's program goes too far. On one level, the emphasis on self-assertion and individual resistance doesn't respect the sociality of the self on which most social theory is built. See the critique of Drucilla Cornell, "Beyond Tragedy and Complacency," *Northwestern University Law Review* 81 (1986). On the other, it doesn't provide a solution or give a satisfactory answer to basic problems of power, exploitation, and rule that arise in democratic political theory. See Cass R. Sunstein, "Routine and Revolution," *Northwestern University Law Review* 81 (1986).

thing is missing by describing these problems simply as a deficit of conditions, of training, of public relations. The intuition generated from this dissertation is that there is something else at work – not simply the failure of a treatment or control regime, but *a democratic deficit* that is largely unexamined in both popular and academic discourse. A general political vulnerability, in part, invites many of the particular abuses that dot the contemporary landscape of custody and confinement.

Attention to local self-government is not a cure-all. For substantive reforms to occur it is not enough that those who live under intolerable conditions of custody demand change. Some of the demand must come from those who see custody at a distance and decide, finally, enough is enough.

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