Early nineteenth-century social reformers’ understanding of the causes of deviant behavior led directly to the invention of mental asylums and modern prisons in the United States. The proper organization of custody, they believed, could address the specific influences that promote mental and social disorder. They turned their attention to the division of time and space within the institution: the layout of cell blocks, the methods of labor, the manner of eating and sleeping. External appearance and internal arrangement could both be designed to eliminate the circumstances that generate crime and model the fundamental principles of healthy community relations. Early advocates of asylums and prisons were responding not just to the disorder of Jacksonian America, as David Rothman notes in his classic text *The Discovery of the Asylum*, but to elements of modern democracy itself: expanded political participation, increased social mobility, and demands for intellectual and religious freedom. Prisons and mental hospitals offered a clear sense of order, discipline, and routine to counterbalance these unsettling transformations in social and economic life. Modern problems required a modern solution: custodial confinement.1

Less recognized, however, is that critics of custodial confinement held a similar faith. For a group of would-be democratic reformers, a repeated refrain was that a lack of participation and the absence of self-government were key causes of a number of maladies associated with prisons and mental hospitals, ranging from the spread of vice, to welfare...
dependency, to inept facility management. Well-engineered opportunities for ward participation, such as town hall meetings and leadership councils, offered a potentially potent set of remedies. A participatory society was less an ethereal ideal to these thinkers and more a worldly governing strategy to bring order to disordered subjects. Democracy, they believed, was good therapy.

Reformers held an image of democracy as treatment and not, importantly, democracy in treatment. By the former term I mean the molding of ward participation—through voting, elections, deliberative fora, and other trappings of democratic politics—to secure and extend the authority of those already in power. By the latter I mean patients’ and prisoners’ ability to exert actual influence over the conditions of their confinement and care. This tension between as and in would linger when reformers attempted to put their ideas into practice.2

These democracy-minded reformers, and these ideas about participation, are not unique to any particular era. Each generation seems to discover them anew. We can find them at work in Thomas Osborne’s Mutual Welfare League at Sing-Sing prison in the 1910s, which aimed to make “not good prisoners, but good citizens.”3 They can be found in the 1960s in patient power-sharing experiments at the Yale Psychiatric Institute, which attempted to “bridge the two worlds” of mental...
hospital treatment and the policy science of democracy.\textsuperscript{4} At the turn of the twenty-first century they cropped up in “new-generation” facilities like the San Francisco county jail under the guise of therapeutic community.\textsuperscript{5} Each generation produces its own democratic radicals and reformers. Each offers rallying cries of community control, odes to the therapeutic utility of self-government, and assertions of the superiority of participatory institutional design. Participatory schemes for correcting the deficiencies of citizens are, as Barbara Cruikshank suggests, endemic to liberal democratic societies.\textsuperscript{6} The result is a reform tradition peppered with grand policy designs, social movements, and haphazard experiments.

The desire to democratize custody haunts both past and present reform efforts. And it’s not hard to see why. On their face custodial arrangements appear to violate a commonly held intuition about political freedom as rooted in self-rule. That intuition holds that an individual or collectivity that is not self-governing is in some way subjugated, subordinated, or shackled by another. We’re uncomfortable with paternalism. One generation’s anxieties about custody echo into the next.

What should we make of these episodes and experiments in participatory governance? Where do wards and their custodians fit in a democratic political order? These questions are at the heart of this book. The answer offered here is that democracy has become inextricably bound to its shadowy underside of custodial confinement. The reformers who founded the modern penitentiary and asylum, along with those who have sought to democratize those same institutions, have in different ways tried to offer a decisive reply to the twin questions of who governs in custody and by what right. A key reason these reform visions, among others, remain unconvincing is a romanticism about civic competence. Reformers tend to separate their favored political theory of rule from the realities, ambivalences, and ambiguities of ward politics.

I argue that wards are not one-way migrants in or out of competence but are often positioned in between. As we’ll see, the competence of wards to represent themselves is shaped by organizational contexts that at the same time are open to revision and tend to decay. Although typically unrecognized, these contexts are also critical sites of political contestation—contestation that invariably provokes backlash and repression. From the halls of St. Elizabeths Hospital in Washington, D.C., to the cell-blocks of the maximum security prison in Walpole, Massachusetts, backlash to wards struggling for representation needn’t take the form of visible violence. It’s not just the retaking
of D Yard at Attica prison in New York State. Nor is it the scalpel of a surgeon severing tissue in a prefrontal cortex. It’s not just the channeling of Black dissidents into asylums by diagnosing them with a “protest psychosis.” Repression needn’t don riot gear, use restraint chairs, or wield baton sticks. Of course, it certainly can. Repression wends its path through procedure: through adjusting who decides, how decisions are made, where those decisions take place, and the incentives for raising claims in the first place.7 The result is not only the creation of pockets of authoritarianism, but the use of the language of “democracy” and “democratic management” to legitimize those styles of rule.

We’re held captive to this ebb and flow: the pressing needs of custody, the struggle for representation, and state repression. Given this cycle and the unique vulnerability of individuals in custody, we ought to think more broadly about how to stem the worst excesses of both custodians and aspiring reformers.

**Custodial Institutions**

At first glance it might seem odd to treat prisons, mental hospitals, boarding schools, hospices, and so on under one heading: “custodial institutions.” By using that term, I simply mean to suggest these institutions can be usefully classed together based on a series of structural similarities.8 Most simply, prisons and asylums 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, punishment), each organization operates as parens patriae. Custodial organizations assume an authority analogous to that of a parent over a child. They assume custody, in the sense of public trusteeship. Finally, the authorization for that trusteeship is, at least in part, rooted in the belief that some individuals cannot, or ought not to, be full participants in economic, social, or political life.9 Treating these organizations as a class, of course, necessarily papers over a variety of differences. The wager of the subsequent analysis is that this limitation will be outweighed by the value of unearthing patterns and phenomena otherwise obscured by treating them in isolation.

Similarly, instead of presupposing a set of givens about wards (about the nature of rationality, about mental illness, about criminality, about
maturity, and so on) and then working out the consequences for politics, it’s potentially more fruitful to flip the script. We should act as if that universal given didn’t exist and see how far we get. We might end up in a similar place, but we’d have a better account of how those assumptions work.

A full description of the similarities and differences of my approach in this book to others could lead us slogging through a semantic swamp. To avoid this detour, or to limit its length, I sketch a few observations here, without much in the way of a defense.

Think of the contest to control wards’ behavior as an ongoing, low-wattage battle. The conflict ebbs and flows, intensifies and fades; lines of movement are gained, then lost. Not only is there conflict between custodians, but there is also contention involving wards themselves. Far from being omnipotent rulers who have crushed all signs of rebellion, custodians are engaged in a continuous struggle to maintain the ideological order—and it is a struggle in which they frequently fail. Wards resist the definition of their situation and, in more dramatic instances, attempt to supplant it through appeals to different normative orders, sometimes for the better, sometimes for the worse. Wards and custodians alike make claims about wards’ interests, and this leads to individuals and collectives mobilizing on behalf of those interests.

This battle extends into the historical record. An archive catalogs evidence of these conflicts and is itself evidence of conflict. What artifacts and ephemera are included, and which are excluded, are the product of both human decisions and nondecisions. Complicating matters is that the plausibility of any research depends on the grounds, the sources, from which the account is extracted and compiled. My response is to pull from both traditional state records and less traditional archives. Close readers will note that the narratives that follow are a pastiche of ward-authored (and institutionally censored) newspapers, handwritten notes of civilian observers, and autobiographical reflections of wards and custodians, among other alternative collections, in addition to more “official” records housed in government facilities. Each kind of evidence comes with its own challenges and its own opportunities.

With painstaking research this low-wattage battle for control is relatively straightforward to narrate but much more difficult to understand. Our analytical spade quickly hits bedrock. What’s significant is not simply whether a particular movement or action was a success or a failure, but explaining how events so improbable became possible. At stake in that task is understanding political possibility in our own moment. To move
the conversation about reform forward, we should look back. There is a pressing need to separate wheat from chaff, to parse practicable change from hallucinatory fantasies.

To that end, the chapters in the book treat the relationship between custody and democracy in three general registers. In the first register, the more micro histories I present chip away at a wider, macro understanding of custody. They collectively undermine the sway of what I refer to in the next chapter as the exclusion thesis. The tendency to think of custodial populations as bounded groups outside the scope of civil society, I argue, is rooted in a misdescription of the political world that ultimately has distributional consequences. Partitioning civil society in this way emboldens a kind of authoritarian managerialism in custody.

In my second register of analysis, we see the significance of narrative conflict. 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 or democratic. Whether a particular institutional arrangement is recognized as democracy enhancing or detracting is a retrospective judgment that itself is a site of political struggle. The experiments, episodes, and (perhaps) lost causes revealed in the pages that follow highlight a shifting Overton window: the range of political ideas that a society is willing to countenance at a particular moment in time.14

Closest to the street, the third register of my analysis is organizational politics itself. While remaining agnostic about the virtue of any given form of custody, the normative project of deepening democratic commitments rests on the possibility of self-rule. I take seriously the timeworn dictum that is does not imply ought. That punishment, for example, tends to take a particular form doesn’t mean that it should take that form. That certain avenues of participation are possible doesn’t imply those avenues are desirable. And so on. However, even if is does not imply ought, ethicists are quick to point out that ought does imply can. If an ideal cannot work, or that ideal is incompatible with what we know is empirically possible, there is something dubious about prescribing that ideal.

Across these registers are prisoners and patients themselves. These are individuals caught up in institutions with a history aptly summarized, without hyperbole, as a chronicle of the depths of human suffering. Some of the ward organizers and advocates described in this book acted with great ability and acuity; this ability was at times deployed in ways that improved life and at others in tragic, self-defeating ways.
I want to avoid the temptation to gloss over the particularity and moral complexity of ward politics. That temptation, as others have noted, is similar in kind to the impulse that segregated the sane from the insane, the upstanding from the deviant, in the first place.

While notes on the registers just mentioned are present as a quiet melody throughout the history of custody, they become louder and more distinct during moments of conflict. The cases in this book leverage that fact. They reveal patterns, mechanisms, and relationships that are likely to be overlooked by studies that focus on routine practices across institutions or those that treat events such as the patient federation at St. Elizabeths Hospital (see chapter 3) and the rebellion at Walpole (see chapter 5) as rounding errors in an otherwise complete theory of democracy.

Broadly, the orientation of this book is a general inductive skepticism. In taking that path, I am drawing on a rich set of traditions within democratic theory itself. And like any inductive approach, it cannot be used to rule out the possibility that future evidence will contravene it. It couldn’t be otherwise: if my account is to have any empirical footing, it also should be falsifiable. I understand the analysis that follows to be exploratory. As a researcher, as a theorist, and as a writer, I’ve followed my own nose to places in the historical record that call out for closer examination. I leave it to my readers to assess my argumentative strategy. The proof of the pudding, after all, is in the eating.

Organization of the Book

The rest of the book is organized as follows. When they are asked about the place of wards and their custodians in a democratic regime, one perspective dominates the contemporary commonsense reply among law and society scholars. That view focuses on the relationship between those in custody and the wider, outside public. What distinguishes the latter population from the former, we’re told, is that those in custody, although citizens, are understood to be insufficiently self-governing and are rightfully subjected to paternal rule. As a result, one need not address the political situation of populations such as children, prisoners, or those with mental illness.

The problem with this view is not particularly philosophically intricate: it presupposes barriers to participation that either do not or need not exist. Or so I try to show in chapter 2. The assumptions that scaffold this view—what I call the exclusion thesis—are intuitive, but wrong. By misrepresenting the conditions necessary for participation, the exclusion