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MASS INSTITUTIONALIZATION AND
CIVIL DEATH

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Most scholars who study felon disenfranchisement trace its roots back to Reconstruction. Southern states drew up laws to disenfranchise people convicted of felonies as an ostensibly race-neutral way to diminish the political power of newly freed Black Americans. Viewed against this historical backdrop, the onset of mass incarceration in the current era expands the impact of a practice intended to be both racist and punitive from the start.

This account is true, but it is incomplete. Non-criminal mass institutionalization has also played—and continues to play—a role in systematic disenfranchisement. Marshaling a wealth of archival and historical evidence, from newspapers, legislative

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debates, congressional hearings, and court cases, I reveal that institutional disenfranchisement is not just about mass incarceration—a singular phenomenon sparked by the Civil War that happens solely within the carceral state and targeted only freed Black people. Institutional disenfranchisement began much earlier, included more spaces than the prison, and initially targeted white men. Indeed, the more familiar prison disenfranchisement had a shadowy twin within the welfare state. Civil death includes more ghosts than previously imagined.

INTRODUCTION

The website for the City of Coalinga invites you into “[t]he Sunny Side of the Valley.”1 “Nestled in the Pleasant Valley at the eastern edge of California’s Coastal Mountain Range, surrounded by hills and ranches,” near Fresno, Coalinga provides a wide range of services, including schools, a medical center, parks, and a community college, to approximately 18,000 residents.2 Community highlights include the Annual Horned Toad Derby and the Wham-O-Bass Hot Air Balloon Festival.3

Despite the abundant information about Coalinga on its website, it is quite challenging to find any details about one Coalinga institution in particular: California State Hospital – Coalinga (CSHC). The 1,300-bed mental health facility houses people civilly committed after completing their criminal sentences for sexual offenses but still deemed a danger to the community.4 It is the largest institution of its

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3 Id.
4 Department of State Hospitals – Coalinga, CAL. DEP’T OF STATE HOSP., https://www.dsh.ca.gov/Coalinga/index.html (last visited May 30, 2021); Rory Appleton, Patients at This Mental Hospital May Have Doomed a City’s Sales Tax Measure, FRESNO BEE (Nov. 29, 2017, 12:15 PM), https://www.fresnobee.com/news/politics-government/politics-columns-blogs/political-notebook/article184847643.html (“Coalinga State Hospital houses patients who may have completed their imposed sentences but remain in state custody while awaiting new housing because they are deemed a threat to the public as sexually violent predators.”).
kind in the United States. Furthermore, it is the largest employer in Coalinga, employing over 3,000 people with an annual budget of over $250 million. Not all Coalinga residents wanted the hospital sited in their city because of the characteristics of the population housed within it. Yet, the possibility of funding and jobs won out: Coalinga successfully beat several other California cities for the opportunity. As one newspaper article put it: “Civic and business leaders in the economically struggling community said they were elated to attract the $365-million facility, which is expected to employ up to 2,000 psychiatrists, nurses, technicians and support workers after it opens in 2004.”

CSHC residents became Coalinga voters when, in 2006, the City annexed CSHC into its boundaries and thus transformed CSHC patients into residents of the City of Coalinga. Coalinga is not alone in using annexation to swell its population as a lucrative strategy for growth. The City hoped it could reap more revenue from taxes and grants due to its larger population, receive more state and federal representation from Census apportionment, and increase its attraction to potential commerce.

In 2010, after annexation, a coalition of CSHC residents established Detainee-Americans for Civic Equality (DACE) to organize the patients’ electoral voices. A board of five current and former patients runs weekly meetings for the hospital residents. Their intent:

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7 Id.

8 See CAL. GOV’T CODE § 57375 (West 2021) (describing how after a territory is incorporated “all inhabitants within the territory, and all persons entitled to vote within the newly incorporated city by reason of residing in the city are subject to the jurisdiction of the city and shall have the rights and duties conferred on them as inhabitants and voters of the incorporated city”); CAL. ELEC. CODE § 2000(a) (West 2021) (allowing citizens to vote in the territory in which they reside).

9 See, e.g., Christopher J. Tyson, Annexation and the Mid-Size Metropolis: New Insights in the Age of Mobile Capital, 73 U. PITT. L. REV. 505, 517 (2012) (noting that twenty-seven states “have experienced significant annexation in the past twenty years due to aggressive expansions of their central cities” in order to spur growth and enhance their economic competitiveness).


11 Appleton, supra note 4.

12 Id.
To make our votes count at the ballot box . . . . Our rights as citizens do not operate in a vacuum. We need to look over these high walls, beyond our past failures and personal needs to become better persons where possible and attain revaluation in society. That means accepting that citizenship also has its obligations, whatever our plight, and one of the most fundamental duties we must never forfeit is the privilege of voting in America.\textsuperscript{13}

In 2017, the City of Coalinga had a dilemma. Facing a budget shortfall, the City Council proposed Measure C, a plan to increase the sales tax by one cent.\textsuperscript{14} Among the Coalinga residents that pondered the merits of the tax increase were the inhabitants of the CSHC.

DACE reached out to Coalinga City officials such as the city manager to discuss the proposed Measure,\textsuperscript{15} as well as other issues affecting the patients, such as visitor transportation.\textsuperscript{16} The CSHC residents were concerned because the proposed sales tax increase would raise the price of goods sold within the hospital.\textsuperscript{17} The group wanted to know how the tax increase would benefit CSHC’s “resident voters” and pointed out that their votes mattered in what would probably be a close election.\textsuperscript{18} Due to the city officials’ lackluster response, DACE notified the Coalinga City Manager that it would recommend to its constituents a “no” vote on the measure.\textsuperscript{19} Ultimately, the Measure failed to pass, 545 to 582.\textsuperscript{20} Slightly more than 15% of the total votes within Coalinga came from CSHC residents.\textsuperscript{21} Of the 177 votes cast by the CSHC residents, 50 voted “yes” and 127 “no” on Measure C.\textsuperscript{22}

Coalinga’s political representatives erupted with fury after the vote results became public. The Coalinga mayor said to the \textit{Fresno Bee}: “I do not think that the voters of Coalinga are going to be happy to know that patients at the Coalinga State Hospital may have swayed this vote in an attempt to bring the city to spend funds during a budget crisis on projects like taxi services.”\textsuperscript{23} California Democratic Assemblyman Joaquin Arambula, whose district includes Coalinga,
declared: “I was shocked to find out that sexually violent predators were able to affect an outcome on something as important as public safety.” 24 He introduced an (ultimately failed) bill to the State Assembly in February of 2018 to strip sexually violent predators of voting rights by designating their last known address before they were committed as their domicile for voting purposes. 25 Ultimately, the City filed suit to overturn the election because of the CSHC residents’ votes. 26

While the CSHC residents draw from one of the most stigmatized categories of institutionalized residents in the United States, the issues that their dispute reveals are neither specific to them nor new concerns. Their electoral controversy taps into a deep vein of thinking about voting in America and those deemed worthy of the franchise. Despite the decades—and indeed centuries—of controversy about institutional resident voting, aspiring and actual voters like the CSHC residents fall through the cracks of the current discussion embroiling scholars, activists, and the general public about voting for institutional residents. 27

Mass incarceration drives the debate about voting by institutionalized people in present-day America. Recent discussion has focused on formerly incarcerated people who continue to face disenfranchisement even after serving their sentences. 28 A more muted, albeit growing, conversation focuses upon currently-incarcerated people. 29

24 Appleton, supra note 10.
Most scholars who study felon disenfranchisement trace its roots back to Reconstruction. Southern states drew up laws to disenfranchise people convicted of felonies as an ostensibly race-neutral way to diminish the political power of newly freed Black Americans.30 Viewed against this historical backdrop, the onset of mass incarceration in the current era expands the impact of a practice intended to be both racist and punitive from the start.

This account is true, but it is incomplete. As the Coalinga saga suggests, noncriminal mass institutionalization has also played—and continues to play—a role in systematic disenfranchisement. Marshaling a wealth of archival and historical evidence, from newspapers, legislative debates, congressional hearings, and court cases, I reveal that institutional disenfranchisement is not just about mass incarceration—a singular phenomenon sparked by the Civil War that happens solely within the carceral state and targeted only freed Black people. Institutional disenfranchisement began much earlier, included more spaces than the prison, and initially targeted white men. Indeed, the more familiar prison disenfranchisement had a shadowy twin within the welfare state. Civil death includes more ghosts than previously imagined.

The nineteenth century was not just the time when Black Americans were freed from slavery.31 It was also the century in which numerous white Americans were enclosed within institutions. Benevolent reformers created institutions from orphanages to asylums in an effort to improve society and reform those found wanting.32 Reformers built these institutions at the same time that state constitutional convention delegates and legislators were expanding the vote beyond a core of mostly property-owning white men.33 Though the political community then included more people without significant economic means, those lodged within institutions posed a problem. They were economically lucrative to the localities that housed institutions, but these same communities were reluctant to enfranchise insti-

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31 See infra Part I.


tionalized residents who could act as a political bloc.34 Given the importance attached to independence and virtue for the legitimate exercise of the franchise, were the same supposed deficiencies that necessitated institutionalization also factors that warranted disenfranchisement? Through benevolence or punishment, a great number of Americans were cut off from political participation because they lived in an institution and were presumed to have forfeited the right to vote due to mental incompetency, dependency, pauperism, disability, and/or criminality.

Many of my scholarly predecessors have noticed linkages between prisons and other institutions. Michel Foucault famously mused: “Is it surprising that prisons resemble factories, schools, barracks, hospitals, which all resemble prisons?”35 Historian David Rothman asked: “Why in the decades after 1820 did [Americans] all at once erect penitentiaries for the criminal, asylums for the insane, almshouses for the poor, orphan asylums for homeless children, and reformatories for delinquents?”36 A generation of historians and social theorists have grappled with the array of institutions that sprung up around that time in Europe and the United States and whether the reformers that advocated for them and the professionals who maintained them were motivated by benevolent, capitalist, or social control inclinations.37 An important recent collection by disability scholars, tellingly titled *Disability Incarcerated*, examines how disabled people have been lodged within different institutions over time, from asylums to hospitals to prisons.38 A significant goal of this scholarship is to

34 See id. at 50–51 (noting that “those who had committed crimes” and “the mentally ill” were deemed unfit to wield political power).
38 DISABILITY INCARCERATED: IMPRISONMENT AND DISABILITY IN THE UNITED STATES AND CANADA (Liat Ben-Moshe, Chris Chapman & Allison C. Carey eds., 2014). Liat Ben-Moshe is also the sole author of *Decarcerating Disability:*
discern the motivations of those that controlled institutions, point out
commonalities among their residents, and object to institutionaliza-
tion and incarceration as mechanisms to warehouse undesirable mem-
bers of society.

Democracy is strikingly absent from much of this previous scholar-
ship. I am agnostic as to the motivations of those who created and
maintained institutions. Instead, my focus is on how and why institu-
tionalization transformed people into economic assets and stripped
them of the power of political citizenship. While scholars and advo-
cates have provided crucial information and attention to Americans
having segregated some people, this Article allows us to see how these
seggregated spaces were nestled within communities willing to notice
institutions for economic purposes but not political ones. 39

This Article describes the deep-rooted connection between insti-
tutionalization and the loss of political voice. This new focus on mass
institutionalization and disenfranchisement crosses the punishmen-
t-welfare divide by noting the common characteristics of both types of
institutionalization. It reveals the connection between political citizen-
ship and all forms of institutionalization.

Finally and significantly, it disrupts the current paradigm about
race and institutional disenfranchisement. In this Article, the institu-
tions I discuss were initially designed to control and disenfranchise
white people, especially those considered ethnically deficient such as
Irish Americans. 40 The techniques of managing marginal white people
within benevolent and carceral institutions provided the scaffolding to
disenfranchise Black and brown people in prisons later. Furthermore,
the logic of disenfranchising disreputable people was developed in
places like Massachusetts 41 before it was exported to places like
Mississippi. Thus, the racism of mass incarceration was layered on top

39 See, e.g., Bernard E. Harcourt, From the Asylum to the Prison: Rethinking the
Incarceration Revolution, 84 TEX. L. REV. 1751, 1756 (2006) (discussing “spatial exclusion”
created by institutions); Disability Incarcerated: Imprisonment and Disability in the
United States and Canada, supra note 38, at xii (explaining how communities
have attempted to beautify institutional buildings while maintaining “the push toward
containment”); Ruth Wilson Gilmore, Golden Gulag: Prisons, Surplus, Crisis, and
Opposition in Globalizing California (2007).


41 See generally Grob, supra note 37; Norman Dain, Concepts of Insanity in the
United States, 1789–1865 (1964) (examining Massachusetts and Virginia as case studies
of early institutions).
Ultimately, the Article calls for more research to fill out the incomplete account of mass incarceration and the vote with a new paradigm. A historically robust view of mass institutionalization and disenfranchisement broadens the implications for our current conversations on prison disenfranchisement. Although it is too early in this research area to propose a strong correlation between the disenfranchisement of early mass institutionalization and the disenfranchisement of later mass incarceration, examining the two together does yield resonances. While part of disenfranchisement was certainly about punishment and mass incarceration, this is, indeed, a partial view. The Jacksonian democratic revolution of the 1800s ushered in a new voting era for the common white man.42 However, it was not the end of political exclusion even for marginalized white male Americans, nor the end of questions about who qualified to vote—who has the right agenda when they want to vote; who lives in the right place; who is part of the community; who has the right character?

Multiple factors could disqualify people from voting. Characteristics such as race, gender, ethnicity, and class played an outsized role in whether people deserved political agency. Furthermore, institutionalization acted as a useful sieve that captured a subset of the undesirable Americans designated as the wrong answers to those queries—the poor, sick, weak, old, ethnic, disabled, and criminal. This Article details that nineteenth century Americans justified institutional disenfranchisement on five main grounds: (1) Moral gatekeeping—institutional residents were problematic people and thus did not have the virtue necessary to participate in the polity; (2) Interest divergence—institutional residents had different interests than non-institutional residents and would vote as a bloc; (3) Fear of fraud—institutional residents were vulnerable to corruption; (4) Physical or mental inadequacy—institutional residents were either physically or mentally impaired and thus were not independent or competent enough to vote; and (5) Social contract violations—institutional residents either violated the social contract or were temporarily removed from it and thus were not part of the community. Any one of these factors, or multiple in combination, sufficed.

A few clarifications are in order: First, what do I mean by institutions? The Article roughly follows the Census Bureau’s guidelines

42 See generally Keyssar, supra note 33 (analyzing the history of suffrage in the United States).
definition of “group quarters”—“a living quarter in which unrelated people live or stay other than the usual house, apartment, or mobile home.” The Census separates group quarters into institutional (such as nursing homes, hospitals, and prisons) and non-institutional (such as colleges, group homes, military barracks, and shelters). This Article focuses upon the first of these groups, what nineteenth century Americans referred to as “benevolent institutions”—those institutions tasked with caring for and, in some cases, reforming the people in residence: asylums, poorhouses, old age homes, sanitariums, and other spaces. I have written elsewhere about how disabled soldiers’ homes tried—and failed—to elude classification as benevolent institutions for voting purposes. I leave to other articles and books the discussion of colleges and military institutions.

Second, what do I mean by disenfranchisement? Institutional residents may be disenfranchised for multiple reasons, such as age or mental competency. For this Article, I am focusing on people who are disenfranchised because they live in an institution. Moreover, institutional residents may not face explicit bars to voting; they may experience procedural hassle, retaliatory measures, or other tactics that impede their ability to vote. Additionally, as in Coalinga, institutional residents may be able to vote until a political crisis reveals their political power.

Finally, what do I mean by civil death? The idea of civil death comes to us from British common law, where people convicted of felonies would lose civil rights. American colonies adopted a modified version of this concept that retained the loss of voting rights for criminals but rejected the total loss of civil rights. While civil death was initially intended as a serious penalty for serious crimes, this
Article will demonstrate that civil death in voting was not limited to this category. Further work is needed on how institutional civil death was linked to other areas besides voting, such as jury service.

The Article will explore how disenfranchisement was (and is) a tool for managing disreputable populations, how political virtue was (and is) used as a disqualifying measure for the vote, and how localities—and indeed the United States—built (and continue to build) themselves up by denying the political voice of the people from whom they drew (and draw) economic sustenance. It allowed (and allows) localities to perpetuate a sleight of hand where they build upon institutions’ economic value while ignoring the political voices of the people lodged within them. Thus, a situation like Coalinga, a California (not Southern) city that attempted to disenfranchise hospital (and not prison) residents is one of many examples of a long trend in American political governance. Today, incorporating institutional residents as unencumbered voters would recalibrate the incentive structure that makes building and annexing institutions in all forms so attractive to localities.

The Article unfolds as follows. Part I outlines the standard contemporary narrative of mass incarceration and the franchise. Part II uses historical research to interrupt this narrative and expand our view of prison disenfranchisement by placing it within a broader institutional disenfranchisement framework. I describe how disenfranchisement in welfare institutions and carceral institutions grew up together. Part III returns to the present and, given this new narrative of mass institutionalization and civil death, concludes with a discussion for catalyzing further study on mass institutionalization and civil death.

I

MASS INCARCERATION

A. Overview

Literature is abundant on the intertwined relationship between mass incarceration and voting. This Section will start by providing an overview of this relationship. It will then relay the story that most scholars tell about how and why this relationship developed. In so doing, I will point out what this literature leaves out—the connection between disenfranchisement and institutionalized residents.

The contemporary United States is a nation of mass incarceration. At the present moment, 2.3 million Americans live in 1,719 state prisons, 109 federal prisons, 1,772 juvenile correctional facilities, 3,163
local jails, and 80 Indian Country jails.\textsuperscript{48} The population of Americans behind bars doubled between 1970 and 1980.\textsuperscript{49} It quadrupled between 1980 and 2005.\textsuperscript{50} The United States leads the world in imprisoning its residents.\textsuperscript{51} The burdens of mass incarceration do not fall equally, however. At this point in our history, a stint behind bars is a fact of life for many Black and brown American men. Black Americans are nearly half of the U.S. prison population, even though they are only thirteen percent of the U.S. population overall.\textsuperscript{52} Latinos are nearly twice as likely to be incarcerated as non-Hispanic white Americans.\textsuperscript{53}

Our carceral nation has significant repercussions for incarcerated people. It also has significant effects on our political community overall. Scholars recite a litany of appalling statistics and anecdotes about what this means for the right to vote.\textsuperscript{54}

Disenfranchisement for members of the carceral state appears in several guises. First are the outright bans on the ability to vote. Only

\begin{itemize}
\item \textsuperscript{48} Wendy Sawyer & Peter Wagner, \textit{Mass Incarceration: The Whole Pie 2019, Prison Pol’y Initiative} (Mar. 19, 2019), https://www.prisonpolicy.org/reports/pie2019.html. The report notes that this figure does not include “military prisons, immigration detention facilities, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories.”
\item \textsuperscript{52} Sawyer & Wagner, supra note 48.
two small and overwhelmingly white states, Maine and Vermont, permit incarcerated prisoners to vote.\footnote{Christopher Uggen, Ryan Larson & Sarah Shannon, Sent’g Project, 6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016, at 4 (2016), \url{https://www.sentencingproject.org/publications/6-million-lost-voters-state-level-estimates-felony-disenfranchisement-2016}.} Thirty states disenfranchise ex-felons on probation, and thirty-four states deny the right to vote to ex-felons on parole.\footnote{Id.} Twelve states disenfranchise Americans who have completed prison, parole, or probation.\footnote{Id.} Over six million Americans, one out of forty American adults, cannot vote due to a previous felony conviction.\footnote{Id.} 

Second, there are procedural barriers to voting for those who retain the legal right to vote but have difficulty exercising it because of access to absentee ballots or third-party interference. Many people in jail probably fit this description. It is not clear to researchers how many of the 600,000 Americans in jail at any given time retain the legal right to vote.\footnote{Margaret Barthel, Getting Out the Vote from the County Jail, \textit{Atlantic} (Nov. 4, 2018), \url{https://www.theatlantic.com/politics/archive/2018/11/organizers-fight-turn-out-vote-county-jails/574783}.} Jail inmates themselves—or even jail administrators—may not know who can vote, or, if they can, how.\footnote{Id.} There are no national directives on providing those incarcerated in jails with information on voting.\footnote{Id.} Election procedure varies by institution.\footnote{Id.} Additionally, it is difficult for advocates to organize jail inmates due to the population churn.\footnote{Id.} Furthermore, the sheriff’s office often determines the flow of information, resources, and documents into the jail.\footnote{Id.} Jail electoral practices are even more fraught when the sheriff herself, an elected official, is on the ballot.\footnote{Id.} 

In addition to the individual harms of disenfranchisement, communities and identity groups face spillover injuries due to the uneven consequences of mass incarceration and prison-based gerrymandering. While prisoners are considered institutional residents for census purposes, they cannot vote within the institution there—and often anywhere.\footnote{See Hansi L. Wang & Kumari Devarajan, ‘Your Body Being Used’: Where Prisoners Who Can’t Vote Fill Voting Districts, NPR: Code Switch (Dec. 31, 2019, 5:00 AM), \url{https://}}
permitted to vote have their votes counted as absentee ballots from their previous residence; they cannot use the prison as their current residence.67 Even Maine and Vermont count the votes of those incarcerated according to the last residence they held before incarceration.68

Prison-based gerrymandering often dilutes the political voice and resources of minority and urban communities while bolstering whiter and rural areas. One out of every thirteen voting-age Black Americans is disenfranchised because of criminal conviction status.69

B. Outlining the Popular Narrative

Why and how did this happen? The classic story presented by scholars and advocates goes something like this: American colonies adopted the idea of “civil death” from the British, who in turn had borrowed it from the Ancient Romans. This civil death concept included the loss of voting rights for criminals. Their disenfranchisement was not particularly significant in the U.S. context until after the Civil War and the passage of the Fifteenth Amendment because of the minimal amount of criminal incarceration in the antebellum United States. Once Black Americans were freed from slavery and constitutionally protected from racial discrimination in voting, racist Southern white elites needed to find a way to disenfranchise Black people that would be ostensibly race-neutral. Criminal disenfranchisement was quite useful, along with tactics such as poll taxes, grandfather clauses, and literacy tests. While the Voting Rights Act and courts eventually struck down these other tactics, criminal disenfranchisement remains in use today to disenfranchise predominantly Black, as well as brown, Americans.70 The initial infrastructure of civil death, drawn from an


67 See Nicole Lewis, In Just Two States, All Prisoners Can Vote. Here’s Why Few Do., MARSHALL PROJECT (June 11, 2019, 6:00 AM), https://www.themarshallproject.org/2019/06/11/in-just-two-states-all-prisoners-can-vote-here-s-why-few-do (“Incarcerated people can only vote by absentee ballot in the place where they last lived.”).

68 Id. (explaining that in Vermont, people who are incarcerated “can only vote by absentee ballot in the place where they last lived”). In Maine, prisoners may register to vote in “any municipality where that person has previously established a fixed and principal home to which the person intends to return.” ME. REV. STAT. ANN. tit. 21-A, § 112.14 (West 2008).

69 UGGEN ET AL., supra note 55.

70 See Frazier, supra note 47, at 484 (“Of the voting prohibitions introduced by these Southern conventions during Reconstruction, only criminal disenfranchisement remains.”).
ancient principle and forged with a racist purpose in the United States, becomes a modern juggernaut of racial injustice.  

Strikingly, this familiar story does not cover institutionalized residents like those in the Coalinga Hospital. CSHC residents are civilly committed and have served their criminal sentences. They are in a hospital, not a prison. The attempts to disenfranchise residents happened due to retaliation by non-institutionalized residents over the hospital residents’ political power. The next Part tells how voting rights and institutions became intertwined during the nineteenth century. The problems that CSHC residents faced will seem familiar rather than exceptional.


72 Following the success of the CHSC residents in striking down the tax initiative, non-institutionalized residents attempted to disenfranchise residents by setting their residence status to their last known adresses, preventing them from voting on local initiatives. See Appleton, supra note 10 (describing the state assembly bill).
II

MASS INSTITUTIONALIZATION

When Alexis de Tocqueville traveled the United States with Gustave de Beaumont in 1831, he marveled at what he perceived as American society’s open and democratic nature. In the United States, Tocqueville wrote, “except for slaves, servants, and paupers fed by the township, no one is without a vote and, hence, an indirect share in lawmaking.” A current observer could add many more categories—women, children, prisoners, Natives—to Tocqueville’s list. However, even at the time, Tocqueville caught sight of the contradictory nature of American political citizenship. He marveled at what he believed to be a progressive democratization story, even as he noted the exceptions. This Part foregrounds the story of one subset of those exceptions—the disenfranchised institutional resident.

In the new sociopolitical regime of Tocqueville’s time, the institutionalized disenfranchised dependent adult man was the emblematic quasi-citizen. Fleshing out this new man’s emergence requires marrying two narratives that are often discussed and debated separately—first, the development and extension of democracy, and second, the rise of institutionalized care. These histories—of voting, socioeconomic class, ability, ethnicity, and criminality—are critically linked. At the same time that benevolent reformers were constructing paupers, criminals, and other disreputable characters as social problems that the state should address, state constitutional convention delegates, jurists, and legislators were disenfranchising them. Americans remixed ideas borrowed from England into a new form that ushered “common” white men into the polity but punished them severely with institutionalization and/or disenfranchisement if they committed crimes and became disabled, aged without family support, or lingered in poverty.

A. Institution Building

U.S. colonists adopted a social and political system from England that made local governments responsible for poor people. They developed this inherited system with increasingly specific categories of people—not all of them poor—who received government attention and treatment. The matrix of state-supported people was structured

by combining assessments about their ability and moral judgment about their economic failure.  

Though early U.S. culture stigmatized the poor, American elites also lamented the toxicity of European class conflict and applauded the colonies’ relatively more egalitarian ethos. Colonists resented, however, that English Poor Law officials regularly transferred poor people and criminals to the colonies. Although colonies provided support for the local poor, they also took pains to distinguish poor vagrants. Those that were not considered residents were “warned out”—that is, actively discouraged from settling and encouraged to move. Additionally, some towns required that new people ask permission to settle. These laws were intended to discourage costly undesirables from settling in towns. For instance, Abigail Gifford, a widow whom John Winthrop described as a “somewhat distracted and . . . very burdensome woman,” was not allowed to remain in Massachusetts Bay Colony and had to return to her ship for deportation. A significant obstacle to implementing such laws was the tremendous expense involved in litigating cases and removing troublesome non-residents. According to historian Michael Katz, “Towns often spent more money ridding themselves of paupers than they would have spent supporting them. Aside from the trouble and expense of endless litigation, the system often was cruel, for old and sick paupers frequently were shipped from town to town, even in the middle of winter.”  

At the same time, criminals were rarely institutionalized. Though states such as Massachusetts had local jails, they were small, and criminals were sent to them sparingly. Magistrates had broad  

75 Id. at 12–18.  
76 See WALTER I. TRATTNER, FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA 19 (6th ed. 1999).  
77 Id. at 20.  
78 See id. (describing state laws that required residency to qualify for public assistance and granted town councils the power to “expel all nonresident vagrants and indigents”).  
79 Id. at 25; see also GROB, supra note 37, at 4–6 (describing the development of Boston’s first almshouse).  
80 KATZ, supra note 74, at 21.  
81 See David J. Rothman, Perfecting the Prison: United States, 1789–1865 (noting that imprisonment was not among the most common punishments for crime), in THE OXFORD HISTORY OF THE PRISON: THE PRACTICE OF PUNISHMENT IN WESTERN SOCIETY, supra note 49, at 111–12.  
82 See id. at 52–53 (describing how early prisons were used for holding a person in anticipation of some judicial action, rather than for correction); see also Adam J. Hirsch, From Pillory to Penitentiary: The Rise of Criminal Incarceration in Early Massachusetts, 80 MICH. L. REV. 1179 (1982) (using Massachusetts as a case study of the shift from criminal sanction to incarceration).
discretion in assessing punishment and preferred fines, whipping, and expulsion from their town limits to incarceration.83

Institutionalization picked up and then took off during the nineteenth century. Paupers were an increasingly worrisome social problem in the early 1800s. Localities transitioned to indoor relief, or poorhouses and almshouses, from outdoor relief, or money transfers, in the early nineteenth century to discourage poor people from seeking state support.84 They believed that paupers would be less likely to ask for help if they were forced to live in an unpleasant space instead of receiving cash payment.

Poorhouses were also intended to save counties money by reducing settlement litigation. According to the Quincy Report, an influential Massachusetts report on poverty published in 1820, “all the towns that had already built a poorhouse ‘without exception claimed a reduction in their expenses.’”85 These new institutions were not just cost-saving devices, however. Reformers were optimistic that institutions would also provide avenues for reform and rehabilitation by removing troublesome people from the environmental contexts that encouraged their problematic behavior. In poorhouses, for instance, poor people would learn how to work in an alcohol-free environment.86

Specialized institutions emerged during the mid-1800s, initially because of rapid and fundamental shifts in the treatment of insanity.87 Initially, the public viewed insanity as a permanent religious affliction.88 Insane people rarely received substantive treatment. The medical profession was in its infancy; more fundamentally, doctors, like most of the public, felt there were no effective treatments for insanity. As Charles Lawrence, a historian of Philadelphia almshouses, remarked in 1808, doctors rarely visited insane people institutionalized in asylums: “They appeared to think that insanity was incurable, and even the mildest cases were in cages like wild beasts . . . .”89 Med-

84 See KATZ, supra note 74, at 11–12.
85 Id. at 22 (citing the Quincy Report, a policy report on almshouses produced by a Massachusetts committee in 1821).
86 See DAIN, supra note 41, at 38; KATZ, supra note 74, at 23. See generally RAYMOND A. MOHL, POVERTY IN NEW YORK, 1783–1825, at 244 (1971) (describing petitions for liquor-licensing reforms that were initiated by a New York City pauperism investigation committee).
87 See KATZ, supra note 74, at 11 (describing the proliferation of such institutions in this era).
88 See GROB, supra note 37, at 7; DAIN, supra note 41, at 4.
Mass Institutionalization and Civil Death

October 2021

Medical cures for mental illness were based on a “theory of crisis” where they induced physical crises, such as bleeding and purging so that the body could expel the harmful substances causing illness. Milder treatments included work, travel, diet, “pleasant living conditions,” “cold shower baths, threats of terrible punishment, and sudden immersion into a pool of water.” For the state, insane people were merely a nuisance, not people suffering from a particular ailment; thus, when poor or violent, they were confined along with the poor and the criminal in relatively undifferentiated and crude almshouses or jails. The impetus for the change in attitude toward insanity came mainly from overseas, as Americans followed European shifts to moral treatment in a benevolent institution. Samuel Tuke memorialized his grandfather William Tuke’s role as the benevolent leader of the lunatic retreat at York, England, in Description of the Retreat, an Institution near York, for Insane Persons of the Society of Friends, published in 1813. Tuke’s benevolent leadership provided a model for Americans, especially for fellow Quakers. More fundamentally, French physician Philippe Pinel, argued that insanity was curable if treated with benevolence, which he termed “moral treatment.”

In the early 1800s, reformers began to pull these mentally disabled people from poorhouses and jails. Though there were some private northeastern insane asylums—the Friends’ Asylum outside Philadelphia, founded in 1817; Massachusetts’s McLean Asylum, opened in 1819; New York’s Bloomingdale Asylum, founded in 1821; and the Hartford Retreat in Connecticut, started in 1824—as well as public asylums in Kentucky and Virginia, the widespread practice of state and local governments treating mentally disabled people in specialized institutions did not take root until the 1830s.

In the early 1800s, criminality also became a matter of intense public concern. Historians attribute this increased attention to several factors, including urbanization and social reform. Between 1790 and 1830, for instance, the population of Massachusetts almost doubled.

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90 Dain, supra note 41, at 10.
91 Id. at 11.
93 Dain, supra note 41, at 14.
94 See id. at 12–13.
96 See Dain, supra note 41, at 38.
97 See Rothman, The Discovery of the Asylum, supra note 32, at xiii, xvi (describing the proliferation of prisons in the Jacksonian era and noting the increased urbanization and “a revolution in social practice” occurring during the period).
98 Id. at 57.
As people lived closer together, banishing criminals to the next town became a less effective way of externalizing crime problems and dismantling criminal networks.99 Moreover, as social mobility increased, neighbors became less likely to know and trust each other.100

Strikingly, institutionalization also formed a fundamental part of criminal justice reform. As historian David Rothman wrote, “criminals” also needed isolation from a problematic environment.101 However, jail construction lagged in comparison to other, more benevolent institution building. State prisons were not widely established until the end of the 1820s.102 Furthermore, federal prisons did not emerge until 1891.103

The journey from outdoor poor relief in the form of cash grants, to indoor poor relief through poorhouses and workhouses, to state-subsidized asylums for “lunatics,” to overcrowded public asylums and poorhouses still housing “lunatics,” with a possible way station in jail, became a well-traversed path for states, with several common steps. As benevolent reformers traveled from state to state, they fertilized localities with ideas about poverty, criminality and insanity, and the need for institution-based solutions.104 They pitted states against each other to secure more state funding for their institutions and create new ones.

Reformers argued that state-funded institutions would provide economies of scale and efficiency, as they would be easier to manage and would be cheaper than a series of local institutions.105 Also, funding could allow institutional officers to utilize the new developments in moral treatment and not just custodial care so that they could cure their disreputable residents of whatever ailed them—be it criminality, poverty, or insanity.106 Legislators and reformers also stressed to localities overburdened with “large numbers of dependent

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99 See id. at 57–58 (discussing some of the social and economic changes that forced communities to rethink their “traditional mechanisms of social control”).
100 See id. at 58.
101 See id. at 82 (“To both the advocates of the congregate and the separate systems, the promise of institutionalization depended upon the isolation of the prisoner and the establishment of a disciplined routine.”).
102 See id. at 80–81.
104 See Rothman, The Discovery of the Asylum, supra note 32, at xiii–xiv (describing the quick pace of institution construction during the Jacksonian era).
106 See id. (“[S]ince most pauper insane were not poor by choice but had been driven into poverty by their illness, medical doctors at a state asylum could restore not only their reason but their economic productivity.”).
paupers . . . that a state asylum would lessen their counties' financial burdens. They also rejoiced in the prospect of turning social dependents into economically productive citizens.”

Public charitable institutions became an important part of a state’s reputation. Reformers used state funding as a competitive measurement to leverage more support for benevolent institutions. The number and types of institutions boomed. States added deaf schools, old age homes, “idiot schools,” sanitariums, and other institutions to their older assemblage of poorhouses, asylums, and jails. John Galt, the superintendent of Eastern State Hospital in Virginia, lectured on idiocy and noted multiple examples of state support for “idiot schools,” including the New York State Asylum for Idiots, the “idiot asylum” in Columbus, Ohio, and the Eastern Lunatic Asylum of Kentucky at Lexington. He ended his list of state support with his strategic plea that “[e]xperimental schools [for idiots] have been elsewhere followed by permanent and well-endowed institutions; and the education of idiots is now the settled policy of many European governments, as it is of at least three of the states of this Union. May Kentucky soon be found emulating their noble example!”

Tabulations of dependent citizens, classified by state, were also available for public consumption and discussion. Politicians measured the generosity—and affluence—of their states by the numbers and proportion of the “defective, dependent, and delinquent” classes they were able to serve and by the grandiosity of institution architecture.

The public also recognized the economic benefits of locating institutions within their midst. During the outdoor relief period, localities tried hard to expel non-resident paupers and decline funding for local ones, especially the “lunatics.” Now, far from shunning these institutions, towns lobbied for the placement of them within their borders. Virginians applauded the erection of Eastern State Hospital in Williamsburg, as “[i]t would give the little capital a new source of eco-

107 Id. at 34.
108 See Rothman, The Discovery of the Asylum, supra note 32, at xiv (referring to this period as “the age of the asylum”).
110 Education of Idiots at the West, 12 Am. J. Insanity 377, 383 (1856).
111 See Frederick Howard Wines, Report on the Defective, Dependent, and Delinquent Classes of the Population of the United States as Returned at the Tenth Census (June 1, 1880), at 575–77 (Washington, Gov’t Printing Off. 1888).
112 Cf. id. at XXI (“But there is always the difficulty of deciding whether the amount of relief extended is governed by the actual demand for it, or by the generosity or favor of those by whom it is administered.”).
113 See supra notes 36–38 and accompanying text.
nomic gain.”114 More than thirty towns submitted bids for the new “lunatic hospital” in Massachusetts. The finalists were Boston and Worcester.115 Worcester was chosen for geographic and political reasons. Boston was in the eastern part of the state, and the central and western parts of Massachusetts were becoming increasingly concerned about Boston’s influence.116 Worcester, forty miles to the west of Boston, was centrally located and well-placed for the railroads.117 Furthermore, Governor Levi Lincoln was a Worcester resident.118 The Worcester legislature approved $2,500 to buy a site for the hospital.119 In another instance, several towns lobbied for the new mental hospital in Illinois.120 Peoria, Hillsboro, and Chicago were the finalists for the site.121 Although the Illinois Senate chose Peoria, legislator William Thomas of Jacksonville altered the bill to read Jacksonville instead.122 Jacksonville received the Illinois School for the Deaf through the same maneuver by Thomas in 1839.123

As William Thomas’s savvy move suggests, politicians had additional reasons for wanting these institutions sited within their jurisdiction—because of the patronage opportunities they created. State legislators or governors appointed institutional board members and officers, and it was not uncommon for the entire personnel to be replaced when the political party in charge shifted. In New York, between 1801 and 1809, as the political leaderships switched five times, the almshouse superintendent did so as well.124 In Virginia, asylum directors and officers, Whigs and Democrats alike, sold commodities to the hospital and hired out their enslaved people to work at it.125 Norman Dain calculated that the value of the Eastern State hospital attendant job was worth $500 (profits from legislative appropriations) + $2,000/year (selling supplies to the hospital) + the use of asylum funds interest-free.126

114 DAIN, supra note 41, at 38.
116 Id. at 31.
117 Id. at 30.
118 Id. at 31.
119 Id. at 30.
120 See Frank B. Norbury, Dorothea Dix and the Founding of Illinois’ First Mental Hospital, 92 J. ILL. ST. HIST. SOC’y 13, 21 (1999).
121 Id.
122 Id.
123 Id. at 18, 21.
124 MOHL, supra note 86, at 75.
125 DAIN, supra note 41, at 51.
126 See id. at 148.
lated the close relationship of patrons and asylums: “[I]n Williamsburg . . . the town was a place where ‘the lazy take care of the crazy.’”

While institutionalized residents were a topic of much conversation among the general public, elite professionals and reformers, and government officials, their voices were not included in the discussion. Statistics and sentimental imagery produced an abundance of new knowledge about these groups, yet also objectified them as voiceless grotesques or a set of numbers with no agency. Reformers also framed their charges as scary, violent, pathetic, and repulsive. Prominent reformer Dorothea Dix’s 1844 memorial to the New York State Legislature recounted the horrifying sights she encountered during her travels through New York State. At Albany almshouse, the master told her that there were “plenty of” insane people in the institution; they were “naked, in the crazy cellar.” In the dungeons, she saw a madman . . . a hideous object; matted locks, unshorn beard, a wild wan conntenance [sic], yet more disfigured by vilest uncleanness, in a state of entire nudity, save the irritating incrustations derived from that dungeon reeking with loathsome filth: here, without light, without pure air, without warmth, without cleansing, without anything to secure decency or comfort, here was a human being, forlorn, abject, and disgusting . . . .

Though Dix and others succeeded in creating a nationwide state-supported institutional infrastructure for people with needs to replace a scattered and piecemeal local practice of cash support, the system was not without its costs. Reformers characterized institutionalized residents to the public and legislators as pathetic freaks in need of public largesse from a benevolent populace. Moreover, the reality of such institutions fell far short of the promise, as states failed to support the institutions they built, institutions became custodial warehouses, and the benevolent professionals did not cure residents at the rate they initially promised.

127 Id. at 158. The linkage of people with perceived economic or mental difficulties with particular communities could prove troubling. New York newspapers signaled an early version of this when they reported that in 1795, of 622 residents in the New York almshouse, 276 (44%) were immigrants. Mohl, supra note 86, at 17. An editorial in the New York Minerva warned: “We shall be over-run with vagabonds . . . we shall have the refuse of all the corrupt parts of society poured in upon our county.” Id. Municipal administrators and city councilors advocated for immigration restrictions for New York City. Id.

128 D.L. Dix, Memorial to the Honorable the Legislature of the State of New-York, in Docs. of the Assemb. of the State of New-York, 67th Sess., at 69, 70 (1844).

129 Id.

130 Id. at 70, 72.
While non-institutionalized people were quite proud of the institutions in their midst, they were less enamored of the people who filled them. Popular sentiment towards paupers hardened as the Civil War neared and the country weathered multiple economic downturns.\(^{131}\) Moreover, the institutionalized population was different than initially envisioned. In short, the Irish came.

Due to the potato famine, Irish immigrants poured into the eastern seaboard starting in the mid-1840s. Irish immigrants were generally stereotyped as drunken, violent, and corrupt paupers. In 1852, Ralph Waldo Emerson wrote in his notebook:

> The worst of charity, is, that the lives you are asked to preserve are not worth preserving. The calamity is the masses. I do not wish any mass at all, but honest men only, facultied men only, lovely & sweet women only; and no shovel-handed Irish, & no Five-Points, or Saint Gileses, or drunken crew, or mob or stock-ingers, or 2 millions of paupers receiving relief, miserable factory population, or lazzaroni, at all.\(^{132}\)

Alabama Know-Nothings Congressman William Russell Smith, in a speech in 1855, declared:

> I do not want the vermin-covered convicts of the European continent. . . . I do not want those swarms of paupers, with pestilence in their skins, and famine in their throats, to consume the bread of the native poor. Charity begins at home—charity forbids the coming of these groaning, limping vampires.\(^{133}\)

Their ranks filled institutions. In 1846, the number of Irish patients admitted to Worcester Hospital in Massachusetts was twelve.\(^{134}\) Eight years later, it had climbed to ninety-six.\(^{135}\) The hospital trustees worried that “incurable foreign paupers” rendered the hospital as custodial rather than curative and that non-Irish patients would refuse to enroll.\(^{136}\) Thus, the hospital “will soon be denied to our native population, except to such as may be paupers or

\(^{131}\) See Hidetaka Hirota, Expelling the Poor: Atlantic Seaboard States and the Nineteenth-Century Origins of American Immigration Policy 121–22 (2017) (describing how Americans had soured on the “optimistic view of the poor” as being able to be reformed by the mid-nineteenth century).

\(^{132}\) 13 The Journals and Miscellaneous Notebooks of Ralph Waldo Emerson 112 (Ralph H. Orth & Alfred R. Ferguson eds., 1977); see also Painter, supra note 40, at 139–40 (quoting and discussing Emerson).

\(^{133}\) Id. at 150 & 420 n.39 (quoting Jeff Frederick, Unintended Consequences: The Rise and Fall of the Know-Nothing Party in Alabama, 55 Ala. Rev. 3, 3 (2002)).

\(^{134}\) Grob, supra note 37, at 136.

\(^{135}\) Id. at 136.

\(^{136}\) Hirota, supra note 131, at 80–81.
criminals.”137 Alienists (precursors to psychiatrists), typically Protestant, native-born, and drawn from elite economic classes, were no more enthusiastic about having Irish patients.138 Prominent alienist Edward Jarvis believed that the Irish had “less sensibility. . . . They have also greater irritability . . . .”139 Alienists tried to send their Irish patients to almshouses instead of asylums, so they were not responsible for their treatment and that non-Irish potential patients would be discouraged from seeking help in asylums.140 Not all immigrants were stereotyped like the Irish. By contrast, the Illinois State Hospital characterized German patients as “physically healthy, docile and affectionate under treatment, and grateful when they recovered.”141

The Irish were the pariah group in most institutions because the nonwhite populations who would have been relegated to an even lower social status were not allowed in most of them. Institutional residence was meant as a temporary political purgatory until the restoration of full-fledged citizenship. Institutions were intended for those who, with reform or treatment, could potentially rejoin the polity and the community. This designation, then, meant white people.142 The few Black people lodged within institutions were segregated in inferior locations.143 It was only in the postbellum period that Black

137  Twenty-First Annual Report of the Trustees of the State Lunatic Hospital, at Worcester 7 (Boston, William White 1854).
138  See Grob, supra note 37, at 128, 140 (describing the antipathy of the Worcester Hospital staff toward the Irish patients and how such prejudice affected diagnoses).
139  Id.
140  See Rothman, supra note 81, at 126 (describing anti-Irish sentiment as a motivating factor behind the lack of funding for prisons).
143  See Grob, supra note 142, at 228.
people appeared in large numbers in mostly segregated institutional spaces.\textsuperscript{144}

Furthermore, paupers were often imprisoned.\textsuperscript{145} At best, a pauper was a lunatic who had an excuse for his economic failure. Or, he was an able-bodied man dependent upon taxpayers for his livelihood. At his worst, he was a criminal whose antisocial actions banished him from the community. In any event, people were labeled in order to be managed. They were branded as social weeds that needed to be rooted out for society to flourish. However, these disenfranchised Americans were not entirely worthless to the polities that housed them; they were, in fact, quite economically lucrative. Yet, their possible political power could also prove threatening to those who were not housed within institutions.

\section*{B. Voting}

Elite men like Horace Greeley applauded disenfranchising institutional residents. The bombastic Whig editor of the \textit{New York Tribune} also served as a New York State Constitutional Convention Delegate in 1867. He told his fellow delegates—and the public reading his account in the newspaper—about the horrors that happened when institutional residents such as paupers were able to vote. He “personally participated where a member of Congress was chosen directly by votes brought out of the almshouse in New York for that purpose.”\textsuperscript{146} Even as he was regaling everyone with anecdotes of outrageous election violations, he believed that everyone knew how corrupt the system was: “[Y]ou know very well that the political party which has not control of the almshouse will not get any of those votes. . . . I believe there has been great corruption in the doling out of votes from the almshouses in support of the political party which has control of them . . . .”\textsuperscript{147} Ultimately, according to Greeley, allowing paupers to vote violated the ethos of elections:

If it was giving five hundred or five thousand men the right of independent voting in this State, that would be one thing. But if you give forty or fifty men who control the almshouses of the State, the

\begin{footnotesize}
\begin{enumerate}
\item[144] Census records note that large majorities of listed paupers were white. \textsc{Bureau of the Census, Dept of Com. & Lab., Special Reports: Paupers in Almshouses} 1904, at 6 tbl.II (1906). For a discussion of a parallel dynamic of segregated institutional spaces with respect to Native Americans in the early twentieth century, see \textsc{Susan Burch, Committed: Remembering Native Kinship in and Beyond Institutions} (2021).
\item[145] \textsc{See generally Rothman, Conscience and Convenience, supra note 36.}
\item[146] \textsc{1 Proceedings and Debates of the Constitutional Convention of the State of New York, Held in 1867 and 1868, in the City of Albany 208} (Albany, Weed, Parsons & Co. 1868).
\item[147] \textit{Id.}
\end{enumerate}
\end{footnotesize}
control of two or three thousand votes, I do not believe that is in accordance with the republicanism . . . .

To disenfranchise paupers, in his view, was “in effect, a proposition to deprive some fifty or sixty managers of poor-houses, and dispensers of public alms, of the privilege of casting eight or ten thousand votes in this State.”

While Horace Greeley was a particularly vocal participant at the convention—as he was at any venue—he was not alone in his sentiment that paupers and other institutionalized white men should not vote. Over the nineteenth century, delegates gathered together in conventions to revise state constitutions or create new ones. Despite their differences on many subjects and their various party affiliations, delegates were strongly united that institutional residents were unfit for the franchise. And, who was in and who was out of democracy mattered.

This critical component of American identity emanated from an assemblage of state—not federal—decisions. In the colonial period, property holding was the hardline for voting, following the English custom of limiting political citizenship to those considered independent. This limitation was partially due to fears of corruption and undue influence: English men unlucky enough to have unscrupulous landlords or employers could find themselves pressured to sell their vote or herded to the polls. Thus, even English suffrage reformers like journalist and activist William Cobbett worried that people without a “will of their own” should not vote because they would give the “artful, wealthy man” too much influence. Elites were concerned about poor men without wills of their own; however, they were also anxious that these same men would be too empowered and thus disobeyed their wealthy superiors.

148 Id.
149 Id. at 221.
150 See Belt, supra note 27, at 472–73.
151 See Chilton Williamson, American Suffrage and Sir William Blackstone, 68 POL. SCI. Q. 552, 552 (1953) (“Among the many arguments against the abolition of property qualifications for the suffrage in the United States none was more frequently heard than that which said no adult male should be allowed to vote unless he had a ‘will of his own.’”); Keyssar, supra note 33, at 5 (noting an argument for limiting the franchise to property owners because they “alone possessed sufficient independence to warrant their having a voice in governance”).
152 See Williamson, supra note 151, at 553.
153 Id. at 553 (citing 3 John M. Cobbett & James P. Cobbett, Selections from Cobbett’s Political Works: Being a Complete Abridgment of the 100 Volumes Which Comprise the Writings of “Porcupine” and the “Weekly Political Register” 231 (London, Ann Cobbett n.d.)).
154 See id.; see also Marc W. Krumen, Between Authority and Liberty: State Constitution Making in Revolutionary America 89 (1997) (noting the
Similar concerns were widespread in the colonies. As voting was public and open, elites at the polls actively monitored the votes of poor men.155 Like in England, colonial elites argued that men without property were liable to influence and coercion by propertied men and would therefore not vote for their interests. John Adams wrote:

[They] are to all intents and purposes as much dependent upon others, who will please to feed, clothe, and employ them, as women are upon their husbands, or children on their parents.156

James Wilson, a famous Pennsylvania lawyer and one of the first justices of the Supreme Court, contended that citizens “whose circumstances do not render [them] necessarily dependent on the will of another” should be the only ones granted the suffrage.157 Blackstone, in his influential Commentaries on the Laws of England, noted:

The true reason of requiring any qualification, with regard to property, in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man, a larger share in elections than is consistent with general liberty.158

By the 1750s, twelve American colonies had adopted property qualifications for suffrage.159 Such qualifications were everywhere linked to the idea of independence—and its opposite, the “dependency” that was thought to compromise a vote.160 This property-based view of independence carried over into the early republic and quickly unraveled during the antebellum era. Between 1810 and the 1830s,

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158 1 William Blackstone, Commentaries *171.
160 Restricting the vote to the propertied in the pre-Revolutionary era followed the English custom of limiting political citizenship to those considered independent. See supra notes 145–51 and accompanying text.
political parties campaigned on ending property requirements. As the country urbanized, economic prerequisites to voting changed from owning property to paying taxes. Later, even taxpaying would be dropped from the requirements. The ideological basis of the Revolution—no governance without representation—made it hard to withhold the vote from the men who had fought against the English. Nevertheless, the idea of political equality—thoroughly knit into the fabric of early American governance—rested uneasily next to other views, also deeply held, about “natural” differences in mental ability, talents, and virtue among men.

Though property restrictions receded, suffrage reformers still kept in place the importance of independence for voters. All property-holding requirements for voting were gone by 1856. Simultaneously, though, as Horace Greeley’s pronouncements suggest, dependency was still on Americans’ minds as a qualification for voting. As states abandoned property and taxpayer restrictions for voting, they incorporated new suffrage qualifications. These restrictions perpetuated, and in some cases exacerbated, the exclusion of white women, African Americans, Natives, and children from full political citizenship. They also established a new pool of white men who were ineligible for the vote. While voting expansion brought white men of varying talents and economic circumstances together in a disquieting sort of political equality, white male elites sought to maintain and reinforce restrictions on the suffrage against those considered undesirable—and dependent.

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162 See KEYSSAR, supra note 33, at 24–25 (describing how many states added taxpaying requirements when property qualifications were abolished).

163 Id. at 25.

164 See id. at 11 (“The logic of ‘no taxation without representation’ had a domestic as well as anticolonial application.”).

165 See generally STEPHEN JAY GOULD, THE MISMEASURE OF MAN (rev. & expanded ed. 1996) (chronicling pseudoscientific measures of intelligence that were developed as justifications for colonialism and racial subjugation).

166 See Who Got the Right To Vote When, AL JAZEERA, https://interactive.aljazeera.com/aje/2016/us-elections-2016-who-can-vote/index.html (last updated Aug. 18, 2020) (“North Carolina is the last state to remove property ownership as a requirement to vote [in 1856].”).

167 See KEYSSAR, supra note 33, at 43–59 (noting contemporaneous democratic backsliding across the states).

168 See id. at 43–49.

169 For instance, Samuel Young, a New York suffrage reformer, contended that suffrage reformers were attempting to extend suffrage to people who “possess[ed] capacity and independence.” REPORTS OF THE PROCEEDINGS AND DEBATES OF THE CONVENTION OF
What did dependency mean? Any number of things. For some
Americans, their gender and what it suggested about female incomp-
tence and dependency was disqualifying, as indicated by the practice
cf coveriture: households swallowed up married women, and only male
heads could vote.170 For others, it was age, as they were not old
enough to be deemed adult men.171 For still others, it was race. Yet
even some adult white men, who cleared thresholds of race, gender,
and age, still did not pass muster. These men included those consid-
ered to have character or mental deficiencies that disqualified them.
This disqualification was because of their residence in an institution
such as a poorhouse or asylum.172

Multiple states took steps to enshrine the disenfranchisement of
institutional residents into their laws. Of the thirty-four states in the
Union before the Civil War, fifteen banned paupers from voting,173
and nineteen banned people convicted of crimes from voting.174 By
the end of the nineteenth century, thirty-eight states disenfranchised
people who had been convicted of felonies.175 These numbers are cer-
tainly an undercount.

So, too, it is difficult to ascertain how many men were at risk of
disenfranchisement due to institutional residence. Institutions, espe-
cially private ones, kept inconsistent records. Furthermore, men
churned in and out of doors; their numbers fluctuated based on eco-
nomic conditions, job availability, and the weather.176 The records we

1821, ASSEMBLED FOR THE PURPOSE OF AMENDING THE CONSTITUTION OF THE STATE OF
NEW-YORK 274 (Albany, E. & E. Hosford 1821).
170 See, e.g., Linda K. Kerber, From the Declaration of Independence to the Declaration
of Sentiments: The Legal Status of Women in the Early Republic 1776-1848, 6 HUM. RTS.
171 See, e.g., Vivian E. Hamilton, Democratic Inclusion, Cognitive Development, and the
172 See Schriner & Ochs, supra note 155, at 489–90 (discussing the advent of
“prohibition[s] on voting by persons under guardianship”).
173 KIRK H. PORTER, A HISTORY OF SUFFRAGE IN THE UNITED STATES 148 tbl.III
(1918).
174 Frazier, supra note 47, at 483; Howard Itzkowitz & Lauren Oldak, Note, Restoring
the Ex-Offender’s Right to Vote: Background and Developments, 11 AM. CRIM. L. REV.
721, 725 (1973). In order of their enactment: KY. CONST. OF 1799, art. II, § 8; OHIO CONST.
of 1802, art. IV, § 4; LA. CONST. OF 1812, art. VI, § 4; IND. CONST. OF 1816, art. VI, § 4;
MISS. CONST. OF 1817, art. VI, § 5; CONN. CONST. OF 1818, art. VI, § 3; ILL. CONST. OF
1818, art. II, § 30; ALA. CONST. OF 1819, art. VI, § 5; MO. CONST. OF 1820, art. III, § 14;
of Elections of N.Y., 380 F.2d 445, 450–51 nn. 4–6 (2d Cir. 1967) (compiling constitutional
provisions); Porter, supra note 173, at 147.
175 Behrens et al., supra note 71, at 565 tbl.2.
176 See generally KRISTIN O’BRISSILL-KULFAN, VAGRANTS AND VAGABONDS:
paupers’ transient lifestyle).
do have suggest that the number of institutional residents was substantial. Alexander Keyssar estimates that the number of paupers denied the right to vote was in the “hundreds of thousands.”\[177\] In 1892, treatise writer Albert Bushnell Hart estimated, based on the 1880 census, that “[t]he number of adult men in asylums . . . was probably not far from 40,000, besides many thousands of defective and weak-minded persons.”\[178\] Census statistics only provide estimations. Table XIX of the 1870 Census, tellingly titled “Pauperism and Crime,” reveals 76,737 paupers and 32,901 prisoners.\[179\] The Census listed 35,564 male paupers in almshouses in 1880;\[180\] 40,741 male paupers in almshouses in 1890;\[181\] and 52,444 male paupers in almshouses in 1903.\[182\] Finally, the Census recorded 2,960,538 people in benevolent institutions during 1910, of which 85,829 were children.\[183\] Though these numbers are not definitive, they strongly suggest that the institutional population and the numbers of the disenfranchised were not insignificant.

For those states that did take steps to disenfranchise institutional residents formally, state constitutional convention delegates provided several reasons why institutionalization should disqualify men from voting. Like Greeley, they contended that widespread electoral fraud and mayhem would follow if institutional residents could vote.\[184\] Delegates also agreed that institutional residents should be disenfranchised because of their potential for political corruption, their dependency, and their bad character.\[185\] Multiple delegates discussed voting rights in the context of a social contract model.\[186\] If people contributed to the social good, then they should receive the right to vote.\[187\]

Above all, delegates emphasized that institutional residents were undeserving of the vote because of their dependency. At the Virginia Constitutional Convention in 1830, a delegate asserted that paupers

\[177\] **Keyssar, supra** note 33, at 108.
\[180\] Frederick Howard Wines, Census Bulletin: Paupers in Almshouses 1890, Classified by Age and Sex 3 (Washington, D.C., Dep’t of the Interior 1892).
\[181\] Id.
\[182\] F.S. Crum, Special Reports on Special Classes of the Population, 10 Am. Stat. Ass’n 380, 382 (1907).
\[183\] Bureau of the Census, Dep’t of Com., Benevolent Institutions 1910, at 60 tbl.51 (2d ed. 1914).
\[184\] See supra notes 146–49 and accompanying text.
\[185\] Id.
\[186\] Id.
\[187\] Id.
were disqualified from voting because of “their dependent condition, and consequent want of free agency, and of their want of interest in the well-being of a community in which they have no stake.”

Delegate Rodney of Delaware in 1831 argued that “[p]aupers who live on the public funds, and who were under the direction of others, who might control their wills, ought not to be permitted to vote.”

Delaware Delegate Clayton warned that enfranchising paupers would lead to fraud: “If persons might come from the Poor House and vote, merely because they had paid a tax within a specified period, the right of suffrage would not be settled as intended by the Convention. Such persons had been known in this county to go to the polls.”

State constitutional convention delegates used rhetorical devices to suggest a parade of horrors if the unfit voted. The spectacle of citizens voting while under institutional control was an important part of the delegates’ arguments. Delegate Bell from Chester sounded an alarm about the awful spectacle that would blight Pennsylvania if it came to pass that paupers were allowed to vote:

In all the counties to the south and east we have what are called poor houses, where all the paupers of the county are kept, and they are there put under the charge of a superintendent on whom they are dependent for every thing. Take away your tax qualifications and what a spectacle would be presented to the eye, to see some four or five hundred of these miserable and degraded wretches marching up to the polls, and voting according to the direction of the person who had them in charge, and turning the scale, if the contest was close.

Delegate Martin took it as a given, though, that “[s]urely no man wishes to see vagrants, paupers, and convicts at the polls, nor to permit any one to exercise the right of suffrage, who does not show a disposition to obey and sustain the laws of the Commonwealth.”

To be sure, not all the people deemed unqualified for the vote were institutionalized. However, institutional residence provided a useful administrative method to discern at least part of that disreputable population. In addition, the institution acted as a visible negative

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188 PROCEEDINGS AND DEBATES OF THE VIRGINIA STATE CONVENTION, OF 1829-30, at 435 (Richmond, Samuel Shepherd & Co. 1830).
189 WILLIAM M. GOUGE, DEBATES OF THE DELAWARE CONVENTION FOR REVISING THE CONSTITUTION OF THE STATE OR ADOPTING A NEW ONE 23 (Wilmington, Samuel Harker 1831).
190 Id. at 24.
192 3 Id. at 159.
signal of dependence—those within lived in a place supported by others. Paupers were an increasingly worrisome social problem in the early 1800s. Over five million immigrants emigrated to the United States between 1820 and 1860, and many had trouble finding work.193 As the United States industrialized, working men experienced extended droughts of steady paid work. Paupers and poor men were not synonymous, however. Pauperism was indicative of and an indictment of poor character, an able-bodied white man who could work but chose not to.194 This stance clashed with men who suffered a stint of unemployment due to market vagaries or other circumstantial factors but who wanted to work. Laws typically defined pauperism as those who received poor relief.195 As poor relief moved from outdoor to indoor relief, this meant lodging within an institution. State constitutional convention delegates believed that paupers did not have the requisite character to vote, and to grant them voting rights would be an insult to striving poor men. As noted in the Massachusetts House Committee in 1831: “Immoral and idle habits are undoubtedly the principal sources of pauperism . . . . Such persons throw themselves upon our bounty, already deeply affected with vice, disease and want . . . .”196

While welfare state procedures uprooted people from their homes, the democratic state relied on independence and deep roots in the community as measures of respectability and determinations of disenfranchisement. Thus the same mechanisms that aimed to reform men also disqualified them for political voice while they lived within an institution.

### C. Corrupting the Vote

While institutionalized residents faced formal bans to voting in multiple states, they could vote in others. However, their voting operated under a negative cloud because of abundant accounts of corrupt electoral practices.

Accounts of voting shenanigans by residents of hospitals, poorhouses, asylums, and other institutions splashed across newspapers through the turn of the century. For example, the Seattle Star reported: “In a last desperate effort to defeat annexation and the moral ‘clean-up’ of Georgetown . . . the sick and decrepit of the

193 KATZ, supra note 74, at 9.
194 See id. at 6–7 (describing the widely-held misconception that work was plentiful).
195 See Steinfeld, supra note 159, at 335.
county hospital and poor farm will be herded to the polls and voted as residents of the city.” 197

Typically, these accounts communicated outrage and disgust: outrage because inmates were forced to vote for the political party of their handlers, and disgust due to the flagrant election violations by disreputable people. Emily Phillips wrote an outraged letter to the editor of the *Ottumwa Semi-Weekly Courier*, quoting from an 1890 address at the National American Woman Suffrage Association:

The constitution of Indiana gives a vote to the pauper and the idiot, as well as the criminal after his term is up and his period of disfranchisement has expired. In one election there the imbeciles on the poor farm at Indianapolis were brought to the polls in a body, and a man who, when asked his name, declared he was Jesus Christ, was permitted to help make the laws which should tax the property and control the future of every woman in that state. I do not understand the logic of the lawmakers who prefers [sic] legislature by male idiots than by educated women.198

Republican John M. Wilson, a representative from Salem, Massachusetts, urged the disenfranchisement of “ignorant paupers,” “a set of unprincipled and unworthy men, who congregate in and around our large cities and villages, and live by stealing from the Americans.” 199 He asked:

Would you have the Americans to stand back, and let a bloated, red-visaged, drunken brute of an Irishman vote instead of yourself? See the wretch as he approaches—his knees knocking and the slobber of tobacco juice running down his jaws; as he comes you hear him hurrah for “Dimocracy,” and here he comes fresh from the bogs, just one year ago, and wants to vote—and if he should happen to get knocked down for his impudence, a great cry is made against it by old time demagogues. I say it is right, let them stand back. Again, you see a lop-eared, wide-mouth, mullet-head Dutchman coming up just from some hut in the land of Kraut, with the foam of beer still sticking to his horsetail whiskers, and his breath smelling of garlic and onions to kill a white man 300 yards, and before he can say anything in the world but “Dimocrat,” he must vote, and that vote counts as much as yours or mine. This is outrageous and abominable. These foreigners that have carried elections for old-liners will have to learn their places. They have no more right to vote than


the brutes of the field and have not half the sense of a good Newfoundland dog; and God knows, when I am a candidate for any office, I would tell these vagabonds and paupers that I do not want their votes, and if I am a candidate I hope to God I will never get them.200

The New York Herald warned in 1856 that “[w]hen the vote of one fifth of this State is cast by paupers, and most of them foreign paupers, the ballot box will become the object of contempt.”201 In Wisconsin, the Madisonian reported in 1839:

The loco-focos had a right to bring down the 300 paupers, naked and dirty, from the Alms House to vote at the last election in New York. The paupers had perhaps all a right to vote. But, we doubt not, that Custom House officer who boasted that he had brought 200 voters, mostly foreigners, from the Croton Water Works, and who proclaimed that he had a sufficient number of others at his bidding to change a ward if necessary, laughed in his sleeve the whole time at the prodigious farce he was enacting, and at the cruel burlesque he was playing upon the “intelligence and virtue” of universal suffrage.202

These accounts demonstrated that corruption and voter fraud, both subtle and flagrant, did happen when institutional residents voted. However, the media’s distress centered upon the democratic violations that these practices inflicted upon non-institutional residents, not those targeted by nefarious institutional supervisors. Thus, unsurprisingly, these accounts of corruption accompanied calls for the disenfranchisement of voter fraud victims.

D. Losing the Vote

In addition to the outright bans written into the law, courts and Congress disenfranchised institutional residents if their residency in the institution’s locality was questioned.203 Losing candidates pursued election challenges in litigation and congressional hearings on contested elections.204 Institutional residents who were disenfranchised based on claimed nonresidency appear to have rarely challenged their disenfranchisement. This type of rights-consciousness happened more

200 Id.
202 Suffrage, Madisonian, Nov. 27, 1839.
203 See, e.g., In re Registration of Voters in Erie, 8 Pa. D. 14, 14–15 (1898) (finding that the primary intention of institutional residents was to reap the benefits of living in the institution, but not “to remain in that election district longer than they remain in the home”).
204 See Belt, supra note 27, at 478–87 (discussing cases where soldier-inmates were disenfranchised based on residential status).
often with elite citizens rather than people like poorhouse residents. In the more abundant former cases, the losers of an election would file suit, charging that the election was invalid because certain people, such as asylum residents, illegally voted.205

These hearings and cases also revealed the extensive political corruption and influence of third parties when institutional residents were permitted to vote. As institutions were run by and enriched partisans, facilitating votes for the party in power could prove useful, and complaining about institutional votes by the party out of power could prove galvanizing. Administrators not only provided transportation from institutions to the polls, but they also acted as witnesses and poll instructors. In that capacity, they coerced their charges to vote for their party. Missouri Coal farm administrators only allowed one man, who was 106 years old, to select his own ticket to vote in 1858.206 The remaining 120 coal farm residents that the administrators brought to the polls were only given the choice to vote the Democratic ticket—the political party of the administrators. Vote corruption was a favored tool of all political parties and worked to reinforce the power of those in control. In the 1858 election, then-Republican Francis P. Blair, Jr. complained that poor farm residents voted—voted against him, that is.207 Four years later, however, after control of the poor farm had changed over to the Republicans, Blair defended poor farm residents; this time, they voted for him.208 James Sheeder cast his first vote for the Democrats in 1864.209 The reason was simple—Sheeder lived at the poor farm in Bedford County, Pennsylvania. He “was a pauper and needed a pair of pants.”210 The poor farm steward refused to give him pants unless he voted the Democratic ticket. David Shepherd lived in the Westmoreland County poorhouse. He testified that “[t]he Irish and Dutch were all democrats to get the good-will of the boss. . . . They were all democrats, of course. If they did not vote that ticket they could not go to the election . . . .”211 William Weil testified that Louis Christman, the Bucks County poor farm superintendent, stashed Frederick Frash in Weil’s house in advance of the

205 See id.
206 H.R. Misc. Doc. No. 36-8, at 447 (1860) (relaying the deposition of one Bernard Crickard).
207 Id.
208 See H.R. Misc. Doc. No. 38-15, at 199 (1863) (relaying testimony observing that “paupers from the county farm were brought to the polls in a wagon, and said paupers cast their ballots for F. P. Blair, Jr.”).
210 Id. at 24.
October and November elections of 1868, Frash had a “sore leg” and usually lived at the poor farm. Frash stayed with Weil for the October election, voted, returned to the poor farm, came back to Weil’s house for the November election, and then was sent back to the poor farm to stay.

Courts shared the fears of non-institutional residents and state constitutional convention delegates that institutional residents could fall prey to vote loading and thus sway local elections away from the wishes of the non-institutionalized. A 1906 Tennessee case, State ex rel. Lyle v. Willett, is instructive. Here, the court noted with concern that institutional residents would override the interests of other non-institutionalized residents:

A different construction of the statutes would place it within the power of eviley-disposed persons in border counties, just prior to our recurring elections, to load the registration lists with the names of nonresidents, who, armed with certificates of registration, would have an unimpeachable title to the ballot, with the result that the citizens of the State would be compelled to witness the corruption and prostration of the elective franchise without the power of prevention or correction.

Legal challenges primarily turned on interpreting where the vote of an institutionalized resident should count. Like other Americans, institutionalized residents could possess more than one residence, yet they were limited to only one domicile for their vote. Was the institution a domicile?

Election treatise writer M.D. Naar, in summarizing voting jurisprudence, opined that both residency and intention were necessary to determine a domicile for voting purposes. Furthermore, a domicile was that place where people were tethered to the community: “[E]very person owes some duties to society, has some obligation to perform to the government under which he lives, and from which he receives protection—duties and obligations. . . . His domicile is the place where those duties are defined and are to be performed.”

Under this formulation, though institutionalized people could be said

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212 H.R. MISC. DOC. NO. 41-7, at 195–96 (1869).
213 Id. at 196.
214 Id. at 195–96.
215 97 S.W. 299 (Tenn. 1906).
216 Id. at 306.
217 M.D. Naar, The Law of Suffrage and Elections 75 (1880) (citing Joseph Story, Commentaries on the Conflict of Laws, Foreign and Domestic, in Regard to Contracts, Rights, and Remedies, and Especially in Regard to Marriages, Divorces, Wills, Successions, and Judgments 43 (8th ed. 1883)).
218 Id. at 87.
to receive protection, they were not understood to perform duties and obligations while housed in an institution. Thus, institutional residents were merely denizens of institutional locations rather than citizens of the political community.

III

Next Steps

In our present day, the prison, not the poorhouse, sits at the centerpiece of American institutions. Scholars have detailed the reduction in welfare state institutionalizations through activism, litigation, and defunding.219 However, mass institutionalization has not disappeared, nor have voting challenges and bans for people who live within institutions. We also rest at the cusp of new developments in institutions. COVID brought attention to the vulnerability of institutionalized residents.220 Moreover, shifting resources (and people) from the carceral state to the welfare state is a centerpiece of advocacy for defunding prisons and prison abolition.221 This Part outlines the next steps for research and practice at the intersection of mass institutionalization and civil death.

Litigation has not succeeded in dislodging criminal disenfranchisement. These laws did not face court challenges until the 1960s voting and civil rights revolution. Richardson v. Ramirez per-
mits the disenfranchisement of convicted felons without a Fourteenth Amendment violation.\textsuperscript{222} It stands in the way of most constitutional challenges that cannot point to clear racial intent in enacting disenfranchisement measures.\textsuperscript{223} The Supreme Court justifies felon disenfranchisement as electoral management instead of punishment,\textsuperscript{224} despite election scholars’ disagreement.\textsuperscript{225}

Instead of litigation, advocates and scholars have pushed for norm changes and policy reform through lobbying state legislatures and governors and passing voter referenda. These efforts aim to reenfranchise those who have served time for a criminal conviction and face continued disenfranchisement as a collateral consequence of a conviction.\textsuperscript{226}

The focus for people still within the prison has been to address prison gerrymandering, not their enfranchisement.\textsuperscript{227} Advocacy propelled changes starting in the 2010 U.S. Census policy for group quarters.\textsuperscript{228} State officials can use a new dataset when they calculate redistricting.\textsuperscript{229} The dataset includes prisoners and is granular enough that states can exclude prisoners when they make redistricting calcula-
tions.\textsuperscript{230} The current Census procedure, however, continues to count prisoners at the prison.\textsuperscript{231} Moreover, prison gerrymandering does not address enfranchising the prisoners; it just addresses where they count as ghost constituents. Scholars and advocates argue that municipalities use prisoners as ballast to increase political and economic power for others instead of their home communities.\textsuperscript{232} However, the remedy they propose—counting prisoners for the census at their preinstitutionalized address—does not enfranchise the prisoners themselves. Instead, it transfers them as ghost constituents from one locality to another. Further, concerning ex-felon voting, the emphasis on lingering post-release disenfranchisement does not address civil death within the prison.

Though they no longer face formal electoral barriers, people living within other institutions may still face obstacles to voting. Their disenfranchisement is not due to criminal sanction but rather disqualification and challenges due to their institutional placement. In managing decreasing corruption, determining locality membership, bloc voting, voter competence, and citizenship requirements, institutional residents have and continue to lose political voice.\textsuperscript{233}

Scholars can do much to add flesh to the account of the entanglement of mass institutionalization with political disenfranchisement that I outlined in this Article. One significant issue worth exploring is the history of the U.S. welfare state. The development of the U.S. welfare state has political citizenship ramifications and political geography implications.\textsuperscript{234} The shift from cash to institutionalization was not just a change in welfare practice, it also had implications for democracy. The same institutions that were established for caring for

\textsuperscript{230} Id.


\textsuperscript{232} See Ebenstein, supra note 228, at 325 (“The practice of counting people who are incarcerated and ineligible to vote as residents of their prison cell . . . increases the voting strength of those districts’ other residents relative to the residents of neighboring districts . . . .”).

\textsuperscript{233} See Paul S. Appelbaum, “I Vote. I Count”: Mental Disability and the Right to Vote, 51 PSYCHIATRIC SERVS. 849, 850 (2000) (attributing the difficulty of achieving policy change in part to the “lack of political clout” enjoyed by people with mental disabilities); see also Bruce Dennis Sales et al., \textit{Disabled Persons and the Law: State Legislative Issues} 99 (1982) (discussing the fear of institutionalized mentally disabled people acting as a voting bloc).

disempowered populations also robbed them of their political voice. Thus, practices such as concentrating people in larger institutions versus group homes, or releasing people with ankle monitoring instead of placing them in a jail or hospital have electoral consequences.

Another topic of interest is the history of psychiatric confinement. Historians have detailed the consolidation of marginalized people within institutions but have not discussed the implications for political participation and the meaning of political community.\textsuperscript{235} Instead, the civil death of those lodged within institutions has been assumed rather than analyzed. More granular information is needed on the political economy of nineteenth century institutions: How were they apportioned within legislative districts? How did their potential political power affect the vote within their communities and states? What was the political culture within the institution itself among the residents? How did residents challenge administrators with respect to voting? What was the political relationship between workers, administrators, and residents? For instance, while mass incarceration scholars discuss the shift of people and resources from urban spaces to rural ones through the siting of prisons, this geographical trajectory may be different for non-carceral institutions. There may also be implications for private versus public institutions. It is harder to draw conclusions for private institutions because of the comparative lack of records. One area that might be different is the issue of administrative corruption. Private administrators would be less likely to be appointed by a political party in power. This would lessen the incentives to force residents to vote for their party. On the other hand, private administrators may have negotiated deals with political parties to coerce their charges.

For disability scholars, this Article addresses the political implications of the disability label, as those who were considered disabled represent a significant portion of those who were institutionalized and thus disenfranchised. It adds a historical trajectory to the current difficulties that prospective disabled voters face and another component to the historical arc of welfare institutions to carceral institutions and the current institutional churn. Further, this account injects another component of the difficulty of integrating disabled people into the community. Disabled people remain in institutions due to weak \textit{Olmstead}\footnote{See, e.g., Susanna L. Blumenthal, \textit{The Default Legal Person}, 54 UCLA L. REV. 1135, 1193 (2007) (“By the 1860s, many of the asylums were simply swelling with poor, indigent, and chronically insane patients, an increasing proportion of whom were foreign-born.”).} enforcement, significant impairments that warrant intensive
care, or a lack of alternatives. There are few obligations by institutions to facilitate the voting of their residents.\footnote{See Pamela S. Karlan, Framing the Voting Rights Claims of Cognitively Impaired Individuals, 38 MCGEORGE L. REV. 917, 930 (2007).} We have incomplete information on the number of institutional residents within the United States and the barriers they face to vote.

Institutionalization brings into relief lingering difficult problems with respect to voting. Who are the people who need accommodations to vote? Institutional residents requiring accommodations vary by impairment and voting technology. All residents need transportation to the polls. Deaf voters have difficulty if voting by voice; blind people have difficulty when there is a written ballot.

Moreover, who are the people, who, due to severe mental impairments, are not legitimate voters? How can we tell the difference? Then and now, institutional residents may face barriers to the vote because their institutions are perceived to have a large proportion of mentally incompetent people; this perception has been used to justify disenfranchising all or a subset of them.\footnote{Tests for voting along these lines have been asserted in ways that may violate equal protection. See, e.g., Nina A. Kohn, Voting and Political Participation (discussing a law struck down as unconstitutional “because it disenfranchised persons subject to guardianship regardless of whether they understood the nature and effect of voting”), in THE LAW AND ETHICS OF DEMENTIA 483, 485 (Charles Foster, Jonathan Herring & Israel Doron eds., 2014); Nina A. Kohn, Preserving Voting Rights in Long-Term Care Institutions: Facilitating Resident Voting While Maintaining Election Integrity, 38 MCGEORGE L. REV. 1065, 1086–91 (2007) (outlining a potential equal protection challenge to restricting ballot access based on capacity screenings); Rabia Belt, Contemporary Voting Rights Controversies Through the Lens of Disability, 68 STAN. L. REV. 1491, 1514 (2016) (discussing what kinds of burdens on a particular group of voters could trigger a successful constitutional challenge); Carli Friedman & Mary C. Rizzolo, Correlates of Voting Participation of People with Intellectual and Developmental Disabilities, 16 J. SOCIAL WORK IN DISABILITY & REHABILITATION 347 (2017) (manuscript at 3–4) (“Laws that bar people who are ‘mentally incompetent’ or under guardianship from voting generally violate the Constitution . . . if they are used to take away a person’s right to vote based on disability even if the person has the capacity to vote . . . .”); Karlan, supra note 236, at 922 (noting different ways in which persons with cognitive impairments are disenfranchised).} Local governance amplifies the problem of coerced mentally incompetent voters in an institutional bloc, such as a memory ward of a nursing home. Setting the threshold of mental competency for voting is a matter of policy and values, not just science. Science can create a metric to assess cognition or determine a mental illness, but it cannot tell us what level of cognition or lucidity is suited to democratic practice.

For voting scholars, this Article’s account challenges the standard historical narrative that the nineteenth century Jacksonian democratic revolution removed property and taxpayer qualifications for voting. The traditional belief is that independence as a requirement for full
political citizenship ended as well. Instead, concerns about dependency changed form; as property requirements disappeared, new requirements such as a lack of institutionalization took their place. These institutionalized citizens flip the classic T.H. Marshall theory of citizenship on its head. While Marshall and others contend that political recognition precedes the conferral of socioeconomic benefits, social welfare benefits trigger disenfranchisement. It is recognition by the state of institutionalization as a politically relevant status that then leads to civil death.

There may also be possible litigation avenues if disenfranchisement of institutionalized residents can be characterized as a form of viewpoint discrimination. Scholars and advocates can also detail the spillover effects of dampened institutional resident voting on communities such as disabled people or older people, akin to the spillover effects of high incarceration rates on communities of color. The political power of these groups may be muted due to the electoral barriers that an institutionalized section faces.

Finally, and perhaps most importantly, my account amends the conventional story about race and disenfranchisement, which focuses upon the disenfranchisement of Black and brown people. But welfare disenfranchisement was targeted towards poor and disempowered white men. These stories need to be knitted together. Furthermore, this Article offers a glimpse of the knotty situation of institutionalized and marginalized white people. While, to be sure, institutionalized white people still retained racial privileges compared to people of color, their precarious position made them targets for intense social intervention. Ironically, their whiteness rendered them both potentially redeemable and vulnerable to attempts at redemption. This Article may be one example of many where marginal white management techniques precede, and may perhaps inspire Black and brown control and elimination mechanisms. Disability may be a significant marker where this process occurs.

239 Cf. Carrington v. Rash, 380 U.S. 89, 94 (1965) (noting that the right to access the franchise “cannot constitutionally be obliterated because of a fear of the political views of a particular group of bona fide residents”).
240 See also Camille Gear Rich, Marginal Whiteness, 98 CALIF. L. REV. 1497, 1503–04 (2010) (describing how “high-status whites are willing to impose economic or dignitary costs on marginal or low-status whites” in order to maintain systems of white supremacy); Khiara M. Bridges, White Privilege and White Disadvantage, 105 Va. L. Rev. 449, 480 (2019) (discussing the transformation of “techniques of racial domination” over time as “non-white people became increasingly able to avail themselves of the resources that white people had at their disposal”).
241 For example, eugenics moved from fears of white American decline and the management of marginal white people like Carrie Buck’s case to targeted sterilization of