Prisoners’ Law

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How would you stay safe in prison? You might hope that prison officials would guarantee your safety. It’s certainly their job to do so, and many men and women work very hard to do just that. The formal procedures, surveillance, and architecture of the prison provide some security. The same bars that would keep you locked in your cell at night would also keep out predatory prisoners. Nevertheless, across every period of prison life that we know about, we consistently find that officials provide only some – and sometimes very little – of the safety that prisoners crave. In fact, prisoners have developed a legal system of their own to order the society of captives.

There are three reasons why prisoners don’t rely only on prison officials to do so. The first is that many prisoners feel physically unsafe. This is, perhaps, understandable. How would you feel living every hour of the day surrounded by rapists and murderers? On the margin, you would likely wish to spend some time and energy to make yourself less likely to be the victim of theft or violence from other prisoners.

Second, the nature of prison is that there are many resources that are held in common. The pull-up bars, tables and benches, handball courts, and basketball courts are freely open to all prisoners, at least officially. In reality, however, there is far more demand to use these resources than there is available supply. One prisoner explains the problem, noting “Somebody wanna control this basketball court or that basketball court. Or this weight bench or that weight bench. CO [The correctional officer] has nothing to do with that. That’s amongst the inmates, the convicts. Sometimes you can maybe talk it out, get it settled without the violence. Sometimes you have to bring the violence.”[[1]](#footnote-1) One prisoner associated with a Northern Hispanic gang explains “If a new yard opens up, you’re going to fight for that handball court, you going to fight for some tables…If you ain’t a Northerner and you come into that areas, you’re going to get stabbed.”[[2]](#footnote-2) Whether by words or action, prisoners must find ways to ration these scarce resources.

Finally, prisoners cannot rely on officials to regulate the underground economy. Some prisoners desire to have alcohol, tobacco, drugs, cell phones and other prohibited items. The illicit nature of these exchanges means that they can’t rely on official legal institutions to enforce property rights and to adjudicate and resolve commercial disputes. As one Brazilian prisoner laments, “if I sell a rock of crack and the guy doesn’t cough up, I got no judge to complain to or promissory note to claim.”[[3]](#footnote-3) Prisoners have to come up with ways to overcome these problems.

For all these three reasons, in nearly any prison that scholars have studied, we find that prisoners create parallel, informal legal institutions.

The hidden nature of this legal regime makes it difficult to study, and it also operates differently in different times and places. To get a glimpse inside this underworld, I rely on reports from a wide range of sources, including former prisoners,[[4]](#footnote-4) scholars of prison life[[5]](#footnote-5), journalistic accounts, and a wide range of other documents and sources used in my book.[[6]](#footnote-6)These varied sources allow me to get inside this mysterious, and sometimes dangerous, world to understand who makes law for the outlaws.

## The Prisoners’ Code

In California prior to the 1960s, the prisoners relied on a decentralized system known as the Prisoners’ Code, or simply the Code. The code contained the accepted norms of behavior for interacting with other prisoners. Some of its key tenets were:

* Never rat on another convict
* Don’t be nosy
* Don’t gossip
* Don’t lie
* Don’t steal
* Pay your debts
* Don’t be weak
* Don’t whine

Those prisoners who adhered to these norms were known as “convicts” – prisoners in good standing. Those prisoners who consistently violated these norms, by contrast, were known as mere “inmates.”

Convicts esteemed those prisoners who abided by the code in interactions with other convicts. This was partly because of the fact that it encouraged behavior that did not cause conflict. Violating the code – by stealing from, lying to, and gossiping about other people – was likely to cause trouble. To the extent that a convict followed these norms, he would have the respect of his fellow convicts. Their respect meant that he was less likely to be the victim of violence.

By contrast, an inmate who regularly violated the code would not have the support or mutual aid provided by others. Because of his isolation and low status, it was more likely that other prisoners would victimize him.

A deviant prisoner was subject to a range of possible punishments. Gossip and ostracism provided a relatively light, but important, penalty. Gossip and ostracism signal to other prisoners about who can be assaulted without repercussions. It tells predators which prisoners have no friends. Violators of the code might also be beaten, stabbed, or killed.

These enforcements were not centrally directed. It was up to individual convicts to follow the Code, to choose to enforce deviations from the Code, and to choose to enforce the meta-norm of other convicts enforcing the Code.

The Code was not a written document that was distributed to new prisoners. It was not formally discussed and agreed upon. There was no central body in charge of monitoring and enforcing the code. It was an emergent legal system that was entirely decentralized. There was little organization, no clearly delineated and permanent groups, and no outstanding leaders among the prisoners.

The Code was a guide for how to treat other convicts,so preying on mere inmates was not typically seen to be a violation of the Code. Similar to Gypsy Law, convicts could prey on outsiders without the same ramifications that would arise if they did so against insiders. Related to this, at the heart of this system, it was the individual’s actions and standing that mattered. Each man, for better or worse, was judged on his merits.

Interestingly, during this period, prisoners did not strictly segregate themselves by race and ethnicity. Prisoners tended to affiliate with other prisoners of their own racial background, with those who shared cultural interests, and with people they knew prior to incarceration. But there were no explicit rules about which prisoners a person could interact with and in what ways.

Edward Bunker, who served time in San Quentin prison in the 1950s and later, explains that “although each race tended to congregate with their own, there was little overt racial tension or hostility. That would change in the decade ahead...what I did for a black friend in the mid-fifties is something I would never have even considered a decade later.”[[7]](#footnote-7)

## The Code Breaks Down

For the Code to operate effectively, prisoners had to be able to know the reputations of other prisoners. If prisoners could not easily know another person’s reputation, then violation of the code would not be deterred as easily. An ostracized prisoner could simply interact with other prisoners who did not know his poor standing. Likewise, prisoners are more likely to free ride on enforcing the Code in larger populations. For the first 50 years that the California prison system existed, its prisoner population was always fewer than 5,000 inmates and the average prison population was about 1,000 people, so knowing other people’s reputations was possible.

While the Prisoner Code worked relatively well during this period, it began to break down because of changes in the prisoner demographics. Starting in the late 1950s and through the 1960s, the prison population started to grow more rapidly than ever before and rose to an unprecedented level. By 1970, it had increased fivefold. By the 2000s, the California prison population had grown to more than 170,000. Likewise, the number of prisons increased from five to 35 prisons. Since a prisoner today will often serve his sentence across multiple prisons, the growth in the number of prisons further increases the relevant population that a prisoner must interact with.

This was compounded by the fact that the prison population was becoming much more ethnically and racially diverse. Whereas in 1951 there used to be two white prisoners for every one black or Hispanic prisoner, that ratio had reversed by 1980. Heterogeneity undermines decentralized legal systems because it confounds consensus. There is less agreement on what constitutes acceptable behavior, what constitutes a deviation from that behavior, and what the acceptable punishment for such a deviation is.

Coinciding with these changes, there was a significant increase in prisoner-on-prisoner violence. Disputes were not avoided and when they arose were not resolved in peaceful ways. In response to this increasingly chaotic environment, prisoners turned to groups that today we often assume are the sources of disorder – prison gangs.

## Prison Gangs as a Source of Law

Since the 1960s, there has been a dramatic increase in the number of prison gangs and prison gang members, and perhaps most importantly, an increase in their influence over other prisoners. In California prisons, gangs are a dominant influence on the everyday life of prisoners.

Prison gangs are prisoner groups that operate in prison (and sometimes on the street), whose membership is restrictive, permanent, and mutually exclusive, and they typically have a corporate entity that exists into perpetuity. Each of these characteristics is costly to produce and maintain, but these features help to promote the informal legal systems that gangs now administer.

Gangs operate in a community responsibility system. Each prisoner must have an affiliation with a group, and each group is responsible for each member’s actions. Prison gangs are the most important such groups in California today, but they are not the only ones. Other prisoners follow the orders of these gangs, but might maintain a relatively limited affiliation based on their race or ethnicity. Likewise, other prisoners who share the same religion sometimes form groups, with these groups then acting as the key community within the system of mutual responsibility.

While all inmates must affiliate with a group, they do not all do so to the same extent. Relatively few prisoners become “made” members of the oldest, most established prison gangs, groups like the Aryan Brotherhood, Black Guerilla Family, Nuestra Familia, and Mexican Mafia. Inmates who desire less influence within the gang can affiliate with subordinate groups. In these cases, prisoners simply go along with the gang rules decided by the gang leaders, who inmates call “shot callers”. This allows them to fit into the community responsibility system because other prisoners know which group is responsible for them, but it doesn’t require the same level of dedication.

Prison gangs often have written constitutions to order their internal workings. New prisoners are frequently given lists of rules that delineate acceptable and unacceptable behavior when interacting with other prisoners. There are clearly established leadership structures, and some of these positions are filled through democratic elections by a gang’s members. Gang leaders self-police their members to ensure compliance with the rules.

When social and economic conflicts arise between gangs, rival gang leaders meet to discuss the conflict and seek a resolution. In practice, this takes place in several ways. For example, if a member of one gang is delinquent in a drug debt to another group, that prisoner’s entire gang is responsible for it. He may be forced to contact family on the outside to pay it off. The gang may pool their resources to pay it off. The gang may force the prisoner to work the debt off for the other gang; he may have to assault a prison guard or an enemy of the gang that is owed. Finally, the gang itself might assault their own member to the extent that it satisfies the shot caller of the other group that a message has been sent that this is not acceptable behavior.

One shot caller provides a description of such a system in action. He explains, “We need to keep the boys in line. If one of our guys is a hot head or something and is always shooting off his mouth it can get everyone into trouble. We don’t want a lockdown, we don’t want a riot so I’ve had to beat down my own guys to control the bigger picture. If one of my guys is messing up then we either offer him up to the other guys or we take him down ourselves. Like I had a guy that ran up a big drug debt, he owed money to the woods [peckerwood skin-head gang] and I had to turn him over to them. They took him to a cell and really beat the shit out of him. We had to do it. If not, then everyone fights which is bad for business and bad for us.”[[8]](#footnote-8)

One prisoner explains the incentives facing gang members and both the positive and negative consequences of their influence. He says, “Look, there is a lot of problems caused by the gangs, no doubt. The thing is, they solve problems too. You want a structure and you want someone to organize the businesses so the gangs have their rules. You don’t run up a drug debt, you don’t start a fight in the yard and stuff. Gangs are a problem but we took care of business. There is a code of silence, you don’t talk about all the stuff with others, the cops split up gangs if there’s a big problem so we keep to ourselves and mind our own business.”[[9]](#footnote-9) This quote also hints at the reason why gangs govern the prison. When riots or serious acts of violence take place openly in the prison, officials lock it down. When inmates are locked in their cells all day long for weeks on end (“split up” as the prisoner puts it) it is much more difficult to earn money in the underground economy.

This group responsibility applies to social interactions as well. One African American prisoner who was new to prison was a bit surprised at the repercussions when he insulted a white prisoner. He explains “the next thing I know, I’m told to make it right with him. I have to man up and take care of my shit. At first I thought, you gotta be kidding me. No way am I going to tell this guy that I’m sorry. Then they told me that I have no choice. That’s the rule, you do what you’re told. They made a very good argument about how I need to fall in line. Okay, so I made things right.”[[10]](#footnote-10)

At times, this can be a brutal method of enforcing rules, but it is successful because it puts the cost of enforcement on those who can do so at the lowest cost–fellow gang members. Gang-based governance outperforms the Prisoner Code because it requires less information about other people’s reputations. It is easier to know the reputation of a group than to know the reputation of every member of that group. This is crucial in the large prison population that now exists in California.

Understanding prison gangs as a source of governance helps to resolve two puzzles. The first puzzle is that people often attribute the promotion of violence as the *raison d'être* for gangs’ existence. One high ranking prison official says that gangs have an “agenda of violence.” But on the contrary, violence in state prisons has fallen dramatically over the last forty years. As Figure 1 shows, there was a nearly 90% decline in prisoner homicides from 1973 to 2012 (no data available from 1974-1979). During much of the 2000s, the homicide rate in prison was actually lower than outside of prison. If gangs form to promote violence, then we should see more violence during their rise to power, not less. Recognizing that gangs provide governance reconciles these apparently contradictory trends.



This explanation also resolves a second puzzle: despite a dramatic decline in the free world in racial prejudice since the 1940s, prison life is actually significantly more segregated today.[[11]](#footnote-11) Showers, telephones, handball courts, and even areas in the yard to sit are claimed by different racial groups and other races are not allowed to use them. Members of different races are not allowed to share cigarettes or meals together, or even to live in the same prison cell.

It would seem that the decline in racial prejudice in the outside world would correspond to a decline in racial prejudice within the prison, but that’s not the case. The puzzle is explained when one considers the increase in the prison population. In a society of strangers, the lowest-cost way of identifying which group a person affiliates with is the color of his skin. Seeing a person is all it takes to have a good idea about who to complain to about his behavior. This ability to know which group is responsible for a prisoner’s actions without knowing that prisoner facilitates the community responsibility system. In a time of small prison populations, it was far easier to know other prisoners, so strict segregation was not needed as a way to economize on information costs.

## Conclusion

Gangs do not provide these legal services because of their good intentions. Gangs enforce their own law because orderly prisons are profitable ones. One prisoner explains that shot callers strove to avoid lockdowns, because “the gangs can’t sell their stuff, drugs and stuff. They don’t want a lockdown, that’s true. . . . Leaders get pissed if there’s a lockdown and we don’t get yard time, I hated it. . . . It’s best to handle things low-key. No one needs a riot.”[[12]](#footnote-12) Disruptions to prisoner life disrupt the underground economy that is a major source of revenue to gang leaders. It’s not from the benevolence of the gangs that they govern the underworld but from their regard to their own interest.

The legal system operated by prison gangs is effective in facilitating social and economic interactions within a society of captive strangers, but it is far from ideal. Gang membership increases recidivism. It lacks a robust system of accountability and is a far cry from the rule of law. Moreover, it funnels power and money to people who most of us would prefer to have less of both. With the lack of exit options (either from the gangs or the prison), there is little check on predatory behavior by gangs. Nonetheless, they do accomplish the goal of providing law to people who can’t rely on the state to do so.

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3. Varella, D. (1999). Lockdown: Inside Brazil’s Most Dangerous Prison. Simon & Schuster, pg. 141 [↑](#footnote-ref-3)
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 Trammell, R. (2009), pg. 145 [↑](#footnote-ref-7)
8. Trammell, R. (2009), pp. 763-764. [↑](#footnote-ref-8)
9. Trammell, R. (2009), pg. 755 [↑](#footnote-ref-9)
10. Trammell, R. (2009). Values, rules, and keeping the peace: How men describe order and the inmate code in California prisons. *Deviant Behavior*, *30*(8), 746-771. p. 766 [↑](#footnote-ref-10)
11. Bunker, E. (2000). *Education of a Felon: A Memoir*. Farrar, Straus, and Giroux. Pg. 132; Irwin 1970, pg. 56. [↑](#footnote-ref-11)
12. Trammell, R. (2009), pg. 763 [↑](#footnote-ref-12)