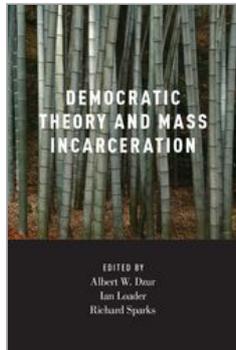


University Press Scholarship Online  
Oxford Scholarship Online



## Democratic Theory and Mass Incarceration

Albert Dzur, Ian Loader, and Richard Sparks

Print publication date: 2016

Print ISBN-13: 9780190243098

Published to Oxford Scholarship Online: October 2016

DOI: 10.1093/acprof:oso/9780190243098.001.0001

## A Trade-Off Between Safety and Democracy?

An Empirical Investigation of Prison Violence and Inmate Self-Governance

Amy E. Lerman

Vesla Mae Weaver

DOI:10.1093/acprof:oso/9780190243098.003.0011

### Abstract and Keywords

The internal management and culture of prison institutions has been too long neglected as a topic of serious inquiry. This chapter examines the judicial idea of a trade-off between safety and democracy in the modern American prison by examining inmate advisory councils in the state of California (called IACs, or inmate advisory councils). The first task is empirical. Using data from three sources, little evidence is found that more active inmate advisory councils are associated with a greater prevalence of violence. Rather, there is a significant and negative association between participation in inmate self-governance and the incidence of violence. The chapter also begins the work of theorizing the democratic deficits of prisons today and suggests to scholars of the carceral state that procedural justice and legitimacy are as important within the prison environment as they are in the venues in which they have been traditionally assessed.

*Keywords:* prisons, democratic participation, inmate advisory councils, inmate self governance, violence

### Introduction

Much attention has been given in recent years to the phenomenal growth of America's criminal justice system and in particular to the rise of mass incarceration. Scholars, pundits, and activists have noted with alarm that the imprisoned population has reached historic levels, with one in a hundred of the nation's adults behind bars as the first decade of the new century drew to a close.<sup>1</sup> This extraordinarily high rate of incarceration represents a stark contrast with other developed democracies, but also a dramatic break with our nation's own history.

While the burgeoning size of the nation's correctional system is noteworthy, equally remarkable are the many significant changes that took place behind the nation's prison walls. At the same time that prison populations were growing, the culture of incarceration and ideologies of punishment were undergoing dramatic revisions. The rehabilitation ideal that had briefly dominated American corrections was retrenched in favor of a punitive ethos, as a "just deserts" rhetoric about the purpose of incarceration began to take hold in both state and federal politics.<sup>2</sup> And the rise of a "new penology" increasingly focused attention on the quantitative management of risk, with new and sophisticated tools emerging to monitor and assess inmates during and after incarceration.<sup>3</sup>

These changes have received considerable discussion in recent scholarship. What has received much less attention is that at the same time these (p.239) changes were taking place, a short-lived experiment with democracy in prison was also coming to an end. In a series of decisions beginning in the 1970s and continuing to the present, American courts began to restrict the democratic freedoms of prison inmates.<sup>4</sup> One notable example is that the courts began to allow prison personnel to ban inmate unions, councils, and other organizations from their institutions. Culminating in the Supreme Court case of *Jones v. North Carolina*, the courts have established precedent that essentially places the "legitimate penological objectives" of the institution before the constitutional right to freedom of association. In *Jones*, the Court concluded that "the fact of confinement and the needs of the penal institution impose limitations on constitutional rights, including those derived from the first amendment."<sup>5</sup> Indeed, in many cases, warding off prison violence was the primary justification for allowing prison authorities to limit a range of freedoms, including the rights of inmates to associate with others, to govern themselves through advisory councils and unions, to access certain types of information, and even to

publish prison newspapers.<sup>6</sup> In their decisions, the court gave wide latitude to prison staff to determine when rights needed to be curtailed, on the assumption that they had specialized knowledge about the internal life of prisons and that prison officials were uniquely positioned to make decisions about how to reduce violence within their institutions.

The courts were not alone in legitimizing the idea that prison authorities should have the ability to ban inmate association under the violence/disorder rationale. Instead, a variety of notable voices began to argue that the activism of inmates, or other collectivist activities of inmates that brought them together in common cause, posed a potential threat to institutional safety. John DiIulio, in his account of governing models in California, Texas, and Michigan prisons in *Governing Prisons*, argued that “reliance on inmates to control other inmates is a recipe for compromising security and violating laws” and that prisons where inmate governance was allowed had higher levels of disorder and vice.<sup>7</sup>

In this chapter, we assess the idea of a trade-off between safety and democracy in the modern American prison by examining one important case: inmate advisory councils in the state of California (IACs, or inmate advisory councils). Our first task is empirical: to discern whether there is support for the idea that greater participation in inmate councils is associated with higher rates of inmate violence. Using data from three sources, we find little evidence to support the notion that more active inmate advisory councils are associated with a greater prevalence of violence. Rather, even when we account for risk factors, prison conditions, (p.240) and other types of prison organizations, we find a significant and *negative* association between higher participation in inmate self-governance and the incidence of violence. In fact, we find some evidence that the presence of advisory councils might actually offset the prevalence of gang violence within the prison.

Our findings do not confirm a causal relationship; our evidence relies only the limited data available to us, which present just a descriptive snapshot of prisons in one state, at one point in time. In addition, an important caveat is that we cannot account for selection; specifically, it may be that the prisons at which authorities enable or encourage greater participation in IACs are precisely those where administrators have less concern about violence to begin with or are those that are engaged in other proactive responses to ensure the safety of inmates. We discuss this possibility further after presenting our results. However, we believe that our findings can be taken to suggest that the

basic justification for limiting inmate associations (and other democratic rights and processes in the prison system)—that it necessarily increases violence—may rest on shaky empirical ground.

Our larger ambition is to begin the work of theorizing the democratic deficits of prisons today and to suggest to scholars of the carceral state that procedural justice and legitimacy should be considered within the prison environment. Elsewhere, we have documented the antidemocratic features of the modern American criminal justice system.<sup>8</sup> American criminal justice institutions over the past half-century have steadily embraced policies and practices that stand in stark contrast to our basic democratic norms and values. Citizens who encounter police, pass through the nation's court system, and are held in the country's prisons and jails are for at least some period of time denied a host of fundamental rights to speech and association; their access to information is restricted; they are made subject to state authority with limited avenues to demand accountability or responsiveness.

We would not argue that some restrictions are not wholly necessary for the purpose of maintaining order and security. There is perhaps an inevitable tension in crime control institutions between the democratic values of a free and open citizenship and the practical needs of a system for deterring and punishing law-breaking. In a democracy, however, there should be a very high bar for limiting citizens' most fundamental constitutional rights. While the evidence we offer here is preliminary, we find little evidence to support the need for restricting rights in the case of inmate governance through prison councils.

### (p.241) A Brief History of Inmate Advisory Councils

One of the primary ways that incarcerated citizens might participate politically, express their opinions, protest treatment within the institutions that hold them, and petition the government is through inmate political associations and prison unions, particularly given the broad and encompassing restrictions on inmate voting, access to the media, and censorship of their writing.<sup>9</sup> In particular, inmate councils and other self-governance organizations provide inmates with a formal vehicle through which their collective needs and concerns can be identified, discussed, and communicated to the institution. In theory, prison inmate councils are formally recognized associations, comprised of elected representatives of the inmate population that are tasked with regularly bringing concerns on behalf of the inmate population to the prison authorities. In practice, council organizations vary in structure, function, and power, but most operate as a representative body with a formal constitution and an executive leadership that consults inmates on a wide range of issues, deliberates, and communicates the needs of prison inmates vis-à-vis the institution, meeting regularly with staff and prison managers. Rather than making decisions or issuing directives to the prison authorities, they serve as advisory bodies meant only to convey the perspectives of inmates on issues that affect the prison institution and make recommendations.<sup>10</sup> Inmate councils serve a two-way function of both presenting inmate grievances to the administration as well as communicating to the inmates the messages, point of view, and directives of the prison administration.<sup>11</sup>

Inmate political organizations (and research on these associations) flourished during the 1960s and 1970s.<sup>12</sup> While poor prison conditions were often the primary target, reformers and activists during this period also envisioned a more democratic and responsive institution, and proposed inmate participation in governance through elected inmate councils. “Traditional prison management is based on an authoritarian regime with a rigid hierarchy,” observed one scholar during the 1970s, where “inmates occupy the lowest level on the hierarchy.”<sup>13</sup> Proposals for inmate government aimed to change this structure, seeing a need to draw inmates into the decision-making process of the institution, and giving them an avenue to take responsibility for and shape the prison environment. By involving inmates in proactive and productive behaviors and giving them a formal channel to express their collective interests and concerns, the democratic prison was imagined to produce more responsible citizenship; inmates would learn democracy by practicing it firsthand and by seeing it function.

(p.242) The idea was not new; mutual aid leagues and inmate councils developed in the early twentieth century in the United States, organized by reformers such as Thomas Mott Osborne and Rev. E. M. Wells, who envisioned inmates as able to effectively self-govern. Several brief experiments in inmate self-government and prison democracy during this earlier era involved inmates meting out discipline, formulating education programs, and managing inmate labor. Osborne developed inmate councils at Sing Sing prison and the Naval prison in Portsmouth, NH, based on the Mutual Welfare League at Auburn where a representative body of elected inmates had the power to decide institutional rules and to guide outcomes in response to inmate grievances of major offenses against inmates. The warden of a Norfolk, Massachusetts prison, Howard Gill, became convinced of the inmate participation idea after the building of a prison wall fell behind schedule and required the enlisting of inmates to work alongside engineers to finish construction. Gill introduced inmate participation in governance in the 1920s to create “a prison community that would be as close to normal community as possible” and developed an advisory council that had staff representation.<sup>14</sup> Ultimately, both Osborne’s and Gill’s experiments in inmate organization and participation were shut down, mostly due to external political factors.

But the idea reemerged after prison disturbances during the 1960s made the logic of the authoritarian prison regime increasingly untenable.<sup>15</sup> With no system for getting grievances across, prisons historically were places of frequent unrest, rampant violence, and revolution. As one scholar notes in discussing the nation’s most infamous prison rebellion and violent repression, “Attica brought into stark relief the contradictions that existed between the use of imprisonment with its closed, often brutal and controlling hierarchical system and democratic ideals like egalitarianism, liberty and transparency that supposedly informed American government.”<sup>16</sup> Prison reformers believed that inmate councils and other forms of participatory prison management could reduce tensions by providing nonviolent avenues for expressing claims and resolving conflicts. Democratic voice within the prison was seen by some as a way to ward off other, more violent forms of demand-making. Inmate self-government emerged at the Washington State Penitentiary in Walla Walla, Washington after inmate strikes in the 1960s in response to hair regulations. The warden formed an inmate advisory council to deal with minor grievances but the council held little decision-making power. The threat of disorder and violence was an immediate rationale for the inmate council: to “co-opt the radical and neutralize the violent potential of traditional politics.”<sup>17</sup> After racial (p.243) turmoil erupted

in the prison, a Resident Government Council (RGC) was formed in 1971 with a constitution and eleven members elected by the inmates directly. The RGC seemed to have power; they could veto decisions of the prison superintendent, and they were able to implement a plan for inmate council members to participate in committees that classified prisoners. The experiment marked the “break up of an undifferentiated prisonized mass and its transformation into a pluralistic multiethnic political culture.”<sup>18</sup> The RGC ultimately began to dissolve after a 1974 incident in which the Walla Walla inmates took hostages at a prison hospital.

An even more striking case of prison democracy occurred at Walpole prison in Massachusetts, one of the most violent institutions in the nation and where prison conditions were wretched: “Many cell blocks were ankle-deep in trash and corridor walls were stained by feces and urine.”<sup>19</sup> A strike began in March of 1973, but this time it was not by the inmates but the correctional staff themselves, who handed the keys to the entire institution to a civilian observer while the whole staff called in sick. Over the ensuing weeks and months, the prisoners themselves managed life inside with just a “skeleton crew of officers and trainees from other institutions” to oversee them. Scholars who have written about Walpole based on detailed notes from the civilian observers found extraordinary organization among the prisoners to maintain order and reduce violence, and establish solidarity and negotiate conflict, with activities including the formation of deliberative assemblies and voting.<sup>20</sup>

Yet despite anecdotal evidence that inmate councils could improve prisons, encourage good citizens, and lead to greater self-esteem among inmates, they largely either failed to take hold or declined in practice over time.<sup>21</sup> Inmate representation was not always welcomed by prison authorities, who sometimes responded to these expansions in inmate power with actions to undermine their efficacy. For example, the April 1952 uprising in the New Jersey State Prison led to the creation of an inmate council, which could present inmate grievances to the prison administration; however, when the council’s grievances were not addressed, the council staged a sit-down strike for several days, leading prison officials to transfer the council’s chairman and others on the council to other institutions.<sup>22</sup>

More importantly, the experiment in inmate councils stalled owing largely to the precarious legal footing of the right of inmates to freedom of association, including but also beyond advisory councils. As early as 1974, in the case of *Paka v. Manson*, a federal district court upheld a prison ban on the formation of inmate unions, holding that inmates did

not have a constitutional right to form such an organization, even when (p.244) the union would serve primarily as a grievance mechanism rather than to organize labor. Inmates had begun forming the union organization primarily to communicate inmate complaints to staff and develop proposals for better prison operations, when several leaders of the organization were transferred to other prisons or put in isolation. Prison officials also began intercepting the union's mail.<sup>23</sup> Reviewing the case, the court concluded that alternative grievance mechanisms existed, including an ombudsman. More importantly, however, the court accepted prison officials' claim that the state's interest in maintaining security was more compelling than the abridgment of the inmates' right to associate, even if the alternative means did not allow for as much inmate participation in the grievance process.<sup>24</sup> In essence, the court ruled that prison officials had the authority to impose first amendment restrictions if they believed that the union represented a threat to prison order, however defined.

The Supreme Court went even further in *Jones v. North Carolina Prisoner Union* (1977). *Jones* concerned a prison union that had formed in North Carolina, had operated peacefully for several months, and had acquired a membership of two thousand inmates across forty institutions before it was banned from meeting and soliciting new members by prison authorities. The union's purpose was to improve working conditions in North Carolina correctional facilities. Again in this case, the prison administration argued that inmate unions threatened to disrupt the security of the institution. In deciding the case, the court formally acknowledged that the right to associate can be "curtailed whenever the institution's officials, in the exercise of their informed discretion, reasonably conclude that such associations ... possess the likelihood of disruption to prison order or stability, or otherwise interfere with the legitimate penological objectives of the prison environment."<sup>25</sup> Thus the mere potential for disruption, as articulated by the staff, would constitute enough of a legitimate government interest to abridge the constitutional rights of inmates. In addition, unlike the previous federal court decision, the Supreme Court in *Jones* held that the prison was not a "public forum" where the democratic voices of individual citizens need necessarily be protected and expressed.<sup>26</sup>

This decision pushed the prison further from the principles of democracy by collapsing the ability of confined citizens to organize and associate. At the same time, it showed the nation that "there are segments of our society which, due to a seemingly justified need for stricter governmental supervision, will not enjoy as broad first

amendment protections as the rest of society.”<sup>27</sup> In their dissent, Justices Thurgood Marshall and (p.245) William Brennan were accurate in their prediction of what would happen to inmates’ rights in the wake of the decision, arguing that inmates’ rights would be quickly eroded in the name of prison security.<sup>28</sup> As one scholar noted: “If the courts were suggesting that inmates’ constitutional freedoms could be limited by prison administrators’ pervasive fears about the security of their institutions, then even before the Supreme Court’s opinion in *Jones*, one could have predicted that prison unions had a questionable future. After all, if the courts refused to analyze the positive capabilities of a carefully structured prison organization, and only considered the alleged security threat which unions may pose, then the first amendment rights of inmates would lose out to the ‘governmental interest’ every time.”<sup>29</sup> While some lower courts continued to protect the rights of inmates to organize and associate,<sup>30</sup> *Jones* essentially “sounded the death knell” for prison unions across the country.

### The Prison Council Today

Despite their substantial decline, inmates at some prison facilities in the United States still enjoy access to and representation in prison councils. While we do not have comprehensive and reliable data on the prevalence of such councils in the nation’s correctional facilities, a 2004 survey found that approximately 6.5 percent of inmates in state prisons and 6.2 percent of inmates in federal prisons report belonging to an inmate assistance group or council.<sup>31</sup> To compare, slightly over 30 percent reported involvement with a religious group, 4 percent reported belonging to a racial or ethnic group, and 9 percent reported involvement with other inmate self-help or assistance groups.

Even less is known about whether and how prison inmate advisory councils shape the prison environment. The studies that do exist—many conducted decades ago and some in European countries—suggest that by giving inmates a platform for democratic expression, councils (or unions) could produce positive outcomes: they could improve communication and yield better relations between prison authorities and their wards, provide a source of legitimacy that incentivizes inmates to comply with prison rules, reduce the us/them division and resentment between staff and inmates, mitigate inmates’ hostility toward the system, lead to a more relaxed community atmosphere, heighten trust between different groups of inmates, and cultivate responsibility among inmates to help produce rehabilitative outcomes.<sup>32</sup>

(p.246) This is not to say that council governance is not fraught with issues. Studies outline a range of important concerns regarding how councils might function in practice; existing studies identify examples of prison staff using the council process to coerce inmates, inmate representatives using the council toward self-serving ends, or the development of councils as a token way to subvert attention from broader issues of prison conditions. Moreover, some councils enjoy little buy-in from inmates, who see them as nothing more than a symbolic group with little power and not an effective avenue of inmate expression.<sup>33</sup> In many California prisons, which are required to have IACs, wardens and prison staff maintain a high degree of control over how these organizations function, with strong oversight of their activities, elections, distribution of meeting minutes, eligibility of inmates to represent the council, and constitution. For this reason, some inmates have charged that the IAC is a “dog and pony show” that carries no real power or initiates very little change among prison staff.<sup>34</sup> In one scathing article, a prisoner contends that if an IAC representative gets too powerful, he is removed and that when a council attempts substantive change or takes meaningful action on larger issues, the prison administration will quickly oust the entire leadership; as a result, holding an IAC leadership position is not respected or considered honorable by inmates.<sup>35</sup>

One of the only systematic studies of several prison councils, conducted in the United Kingdom, found that rather than actually changing policy (though they could sometimes influence policy direction on less contentious issues), councils “functioned as a kind of focus group ... to inform prisoners of matters or to canvass prisoners’ views on matters upon which they chose to invite feedback.”<sup>36</sup> Rather than directly changing prison policy or directly adjudicating complaints from inmates, these organizations played an agenda-setting role. But most ideas of how inmate councils may matter for the prison environment or for inmate attitudes and behaviors have yet to be examined; for instance, we know of no empirical assessment of the effects of councils on prison culture and order, inmates’ perceptions of institutional legitimacy and trust in authority, inmates’ sense of political empowerment and self-efficacy, or the relationship between inmate advisory councils and membership in other informal groups, including gangs.

The limited extant scholarship therefore leaves us with little understanding of how prison councils operate in the modern prison and little systematic evidence of even the most important outcomes of prison councils. Our intention here is to take a first step toward

understanding the most basic issue: the relationship of prison councils (or their absence) to the (p.247) development of factional groups, namely gangs, and to the prevalence of violence within the institution. This is of particular importance given the centrality of the supposed connection between councils and prison order to key court decisions that allowed prisons to curtail inmate organizations.

There are several reasons why we might expect prison councils to be associated with lower levels of gang activity and fewer violent disruptions in the prison environment. First and most basically, prison councils might serve as an outlet of frustration for a group of highly disempowered individuals in an environment where they otherwise command little control over their daily lives and where alternative mechanisms for the formal recognition of grievances are generally weak.<sup>37</sup> In theory, the presence of inmate advisory councils could help move institutions that are structured around hierarchy and dependence toward a model where agency, dialogue, and exchange have at least some small role, providing a potential escape valve for inmate frustration, alienation, and resentment. As one correctional officer noted, “although it is not a decision-making body, it does allow the prisoners to feed through their concerns. It gives them a voice.”<sup>38</sup>

By giving the inmate population formal channels through which their collective voice could be heard, and by giving institutional authorities an opportunity to be regularly responsive to inmates, prison councils may diminish the prevalence of more aggressive, violent forms of expression, resistance, and claims-making. Though writing of labor unions, one scholar noted that inmate bargaining power provides a “realistic alternative to litigation or insurrection” and led to a decline in militancy.<sup>39</sup> In fact, as we have already noted, the violence-reduction potential of inmate associations was often cited as a key rationale by reformers during the height of the movement toward a more participatory prison; inmate unions and councils were believed to lessen the incidence of violent confrontation between inmates and with staff by replacing violent contestation with collective bargaining and offering inmates a way to resolve conflicts peacefully. “By providing a formal and legitimate mechanism for the communication of grievances,” one scholar argues, “the inmate is given a feeling that he has a vested interest in the maintenance of order.”<sup>40</sup> By changing how inmates orient themselves toward prison staff and also toward one another, the presence of advisory councils may indirectly bear on the overall level of violence within the institution.

Second, and related to this notion, inmate participatory mechanisms like councils may not only be an outlet of frustration that dampens violent outbreaks, it may be an *outlet of democratic expression* that cultivates democratic habits above more disorderly expressions. In practice, prisons strip (p.248) inmates of democratic voice.<sup>41</sup> In contrast, inmate councils—in theory and perhaps also in practice—can promote democratic habits, skills, and sensibilities. Through participation, inmate participatory groups promote “the interdependence of union members and the responsibility they have to one another and to the larger community to which they belong.”<sup>42</sup> Scholars have extolled the democratic benefits of other inmate governance groups, like unions, where inmates not only have a place to communicate grievances, but also learn compromise, cooperation, bargaining, and civic engagement.<sup>43</sup> For example, one officer in a study of UK prisons noted that “the level of violence has reduced because we discuss frankly the effect on the population that violence has.”<sup>44</sup>

More broadly, by participating in a democratic group, taking on civic roles, and witnessing the positive outcomes of their collective efforts, inmates may develop a sense that they are endowed with the responsibilities of good citizenship. “Participation in formal bargaining can encourage a sense of responsibility, dignity, and self-respect.”<sup>45</sup> Through the council process, individual prisoners experience a variety of phenomena that might lead them toward more pro-social (and less violent) behaviors and attitudes: they may witness the pursuit of collective ends and objectives through democratic debate, inspiring solidarity and collective action; they may gain a sense that their own interests, as well as the collective interests of the group, are being represented and recognized; they may gain a sense of control over their fate, which may lead to a diminution in anomie and alienation; they may gain a sense of positive identity that encourages them to take on pro-social roles and see themselves as members of a community; they may gain a sense of belonging in the public sphere. Again, these psychological changes may mitigate the propensity for prison misconduct and violence.

At the same time, because inmate councils are premised on deliberation and bottom-up engagement, instead of top-down authority, they may have the capacity to bring people together in an inclusive dialogue. In turn, by promoting inmate-staff dialogue and rituals of deliberation and cooperation, a more trusting environment may emerge, one where the first recourse is discussion, not threatening or turning to physical remedies. “Collective bargaining between inmates and administrators,”

notes one scholar, “can effectively correct institutional problems and avert disorder.”<sup>46</sup>

Inmate councils may also increase the legitimacy of the institution in the eyes of its wards. If the institution is responsive to the council rather than treating it as purely symbolic, inmates may come to feel a sense that using democratic channels to pursue their interests (as opposed to other (p.249) tactics, including violence) can be a successful way to accomplish their goals. Moreover, research on procedural justice shows that regardless of the outcome, people who feel they have been treated fairly by institutions come to regard those institutions as legitimate sources of authority. In this way, perceptions of legitimacy promote law-abiding behavior. This, in turn, may serve to mitigate violence; when people believe in the legitimacy of an authority, even when they disagree with an outcome of a decision made by that authority, they are more likely to follow the rules. The inmate advisory council, within a prison that is by definition authoritarian, may heighten the legitimacy of the institution in the eyes of inmates by providing for a more participatory process for the resolution of grievances and disputes. It may likewise inspire more positive attitudes toward prison authorities, who come to be seen as willing to listen and consider the needs of inmates.

Third, and consistent with earlier research on prison organizations, councils may provide a viable alternative to prison gangs, which flourish where formal structures for community governance are too weak to ensure the maintenance of order. Gresham Sykes’s famous study, *The Society of Captives*, developed the idea that informal systems tend to form in prison environments when formal systems are unresponsive to prisoner needs. Where prison institutions lack a mechanism of self-governance, and where officers’ control and authority are seen as weak or illegitimate, inmates may turn to prison gangs as a system of “forced reciprocity” between inmates and staff.<sup>47</sup> As prison scholar David Skarbek argues, “Prison gangs end up providing governance in a brutal but effective way ... they impose responsibility on everyone ... prisons run more smoothly because of them.”<sup>48</sup> While this may be true, certainly inmate councils provide a far more preferable means of establishing structure, norms, and rules, constituting an “identifiable social system that provides mechanisms that help alleviate the pains of imprisonment.”<sup>49</sup>

Finally, inmate councils could lead to actual outcomes, such as improved prison conditions, that benefit inmates and better their relations with other inmates and staff (but see DiIulio’s account in *Governing Prisons*). There is little evidence, however, to either support

or refute the claim that advisory councils are successful in making substantial changes in prison operations. One news account describes an advisory council in California developing an “honor yard” and an inmate council in Maryland that successfully advocated for and ultimately established a career center. As one inmate argues, the advisory council “helps ensure that there is a proper system for putting issues across, so it is not ad hoc. It is a voice you (p.250) can use to get results. It is good that we have a council otherwise a lot of things would get pushed aside.”<sup>50</sup>

### Data

Each prison facility in the state of California is required to have an Inmate Advisory Council (IAC) that is tasked to “advise and communicate with the warden and other staff those matters of common interest and concern to the inmate general population.”<sup>51</sup> While levels of participation vary by facility, as we discuss later, the structure and function of IACs are mandated by policy. Most importantly, IACs must be constituted by regular elections where each inmate has an equal vote, and IACs operate under a council-designed constitution and bylaws. In some cases, IACs are structured so as to be representative of each racial/ethnic group or designated housing unit. Representatives are elected by the inmate population or subgroups of inmates, who in turn elect their leadership (chairman, vice chairman, secretary, treasurer, sergeant at arms) for a term of one year. The prison facility must provide the IAC with space to assemble and any supplies that are needed to communicate their activities and decisions with the inmate population. Council meetings are recorded in minutes and after being approved by the warden, meeting minutes are distributed. IACs at one facility can “correspond and exchange copies of meeting agenda and minutes with councils at other department facilities.”<sup>52</sup> After deciding on an agenda that is submitted to prison authorities, wardens or their designees are required to meet with the council at least once every month and “shall provide the council with a timely written response which shall indicate what action ... was taken, the reasons for the action and, when applicable, the manner and appropriate time of implementing the action.”<sup>53</sup>

We rely on two primary sources of data to explore the relationship between participation in advisory councils in California prisons and the prevalence of violence at the institutional level: the California Correctional Officer Survey (CCOS) and COMPSTAT reports from the California Department of Corrections and Rehabilitation (CDCR). The CCOS is a survey conducted in 2006, which was distributed by mail to all active correctional officers in California’s thirty-three adult state prisons in that year.<sup>54</sup> The survey yielded 5,775 completed questionnaires, for a response rate of 33 percent. The final sample was roughly representative of the total population on key demographics, and although response rates varied somewhat (p.251) across institutions, no prisons had to be dropped from the sample due to a lack of respondents.

The CCOS asked officers a wide range of questions concerning the prison facility where they work. These data provide our key indicators of the proportion of inmates in councils and the proportion of inmates in gangs, as well as our outcomes of interest: frequency of gang-related

violence and frequency of inmate violence in the prison. In addition, we use three measures of prison conditions as control variables in our multivariate analyses: assessments of dirt and litter, assessments of rodents and insects, and overall assessments of prison conditions. As our analysis is conducted at the level of the institution, we aggregate officers' responses by prison.

The COMPSTAT Branch of CDCR compiles data for the Division of Adult Institutions, which are available as thirteen-month statistical reports. These reports capture an array of metrics at the institution level. From these data, we employ a series of measures that serve as controls in our multivariate analyses. First, we use both security level (percentage of inmates at Level 1, Level II, Level III, and Level IV) and overcrowding as proxies for the relative risk of violence at the institution. In addition, we use a variety of measures to control for participation in informal organizations (inmate leisure groups, Alcoholics Anonymous, Narcotics Anonymous, and veterans groups) and also in other formal groups and programs (academic programs, vocational programs, work assignments, and substance abuse programs).

Our third data source provides evidence from a national sample. The Bureau of Justice Statistics (BJS) regularly conducts surveys of inmates across a broad swath of the nation's state and federal prison facilities. In one, the *Survey of Inmates in State and Federal Correctional Facilities, 1997*, inmates were asked several questions (omitted from later surveys) that allow us to explore the relationship between inmate safety and participation in inmate councils at the level of the individual.<sup>55</sup> In this 1997 survey, a large sample of 14,285 state inmates and 4,041 federal inmates completed interviews of about an hour in length; under strict confidentiality procedures, they were asked for information about their sentence length, the type and characteristics of their criminal offenses, criminal histories and prior incarcerations, socioeconomic status, substance abuse, and participation in prison services and programs. The data include information on the type of prison facility (male, female, coed, confinement, or community-based), level of security, and type of housing unit. In addition to a sample of forty federal facilities, the sample consisted of inmates in each of the nation's thirteen largest male state prisons, (p.252) seventeen largest female prisons, and a sample of 223 male and 47 female prisons selected from the remaining facilities with a probability proportional to the size of the facility.

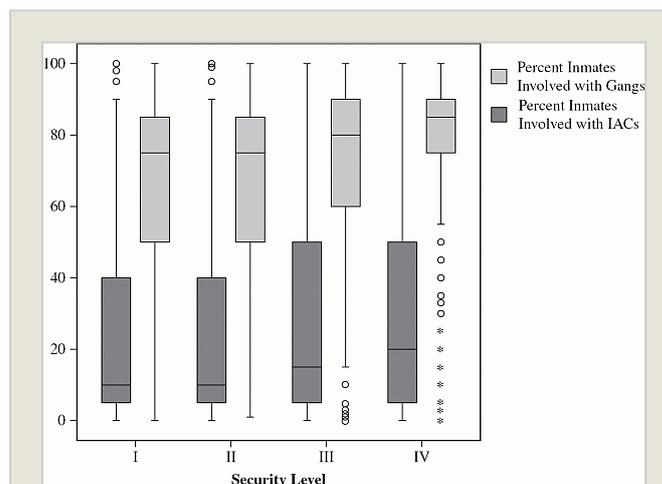
### IACs, Gangs, and Prison Violence in California

According to correctional officers, participation in IACs varies widely across California's adult prison institutions. While on average about 30 percent of inmates are estimated to be involved with their IAC in some way, average estimated participation ranges from a low of 18 percent at one prison to a high of 36 percent at another. There is even greater diversity across prisons in the percentage of inmates estimated by correctional officers to be involved with gangs. According to officer estimates, about 75 percent of inmates are involved in some way in gangs or gang activity, but this ranges from a low of 42 percent at one prison, to a high of more than double that (87 percent) at another prison. Similarly, officers estimate an average of eleven different gangs operating in their prison, with estimates ranging from eight at one prison to twenty at another.

As shown in Figure 11.1, levels of participation in both gangs and IACs are higher in higher security prisons. Compared to 24 percent of inmates in Level I facilities who participate in the IAC in some capacity, IACs experience roughly 31 percent participation in Level IV facilities. Like IACs, participation in gangs increases in higher security levels; gangs range from 67 percent participation in Level I facilities, to 71 percent in Level II, 73 percent in Level III, and 81 percent in Level IV. Variation in gang and IAC membership across security levels, however, is likely endogenous to a wide variety of other attributes of the institution and the individuals assigned to them that will affect the propensity of individuals to join these groups. Security levels dictate a great deal of prison life, from the security infrastructure, to the correctional orientation of custody staff, to the range of offenses and propensity for violence of the inmate population. To account for these differences, it is therefore useful to examine how participation in IACs and gangs vary *within* the subset of prisons at a particular security level.

A preliminary examination of prison institutions conducted separately by each security level shows a negative relationship between the percentages of inmates participating in IACs and gangs. For instance, Figure 11.2 graphs the relationship between the two for Level II facilities (defined as institutions where the majority of inmates are classified (p.253) (p.254) at this security level). Comparing distributions of age, race, primary commitment offense, and county of commitment for each Level II facility in the California system reveals reasonably comparable prison populations.<sup>56</sup> The average age of inmates varies little across institutions, ranging from 32.4 years at CCC to 36.8 at CMC. Equally consistent is the distribution of controlling commitment offenses: while those institutions also housing higher

classifications have on average more property crimes, the proportion of drug crimes in each institution is about 20 to 30 percent and property crimes between 15 to 25 percent.<sup>57</sup> The racial composition of inmates varies slightly more around the statewide average of about 33 percent each for whites, blacks, and Hispanics, with the percentage of whites lowest at CVSP (21.87) and highest at CCC (41.6). This is in part due to the geographic areas from which each institution primarily draws.<sup>58</sup> Despite these similarities, there are significant differences in the associational life of different Level II facilities. As the figure shows, prisons with higher percentages of people in gangs (based on correctional officer perceptions) have lower percentages of people involved in IACs (again, based on perceptions). The correlation between the two is  $-.59$ , and the relationship appears roughly linear.



*Figure 11.1.* Mean and Range of Participation in IACs and Gangs, By Prison Security Level

Data are estimates provided by correctional officers assigned to each security level. N=288 for Level I; 786 for Level II, 1374 for Level III; and 1571 for Level IV

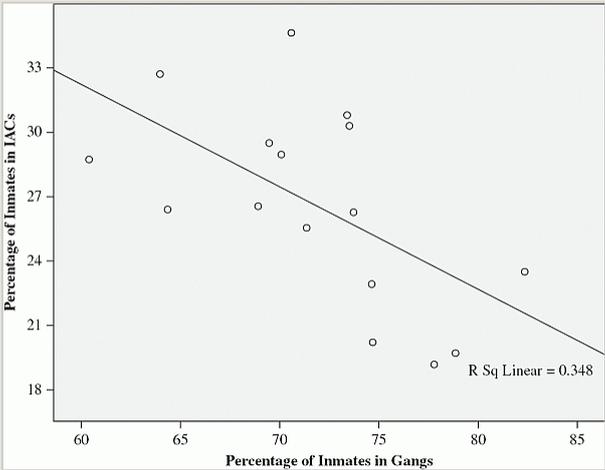


Figure 11.2. Percentage of IAC and Gang Participation for Level II Prisons

### A Tradeoff Between Safety and Democracy?

The survey of correctional officers also provides a more qualitative assessment of IAC activity. Activities by both gangs and IACs are seen by many officers as a direct response to issues in the prison, including problems between inmates and staff or problems with prison conditions. Not surprisingly, however, this is much more so the case for IACs than for gangs. When asked how frequently activity by each group is motivated by problems between inmates and staff, or problems with prison conditions, about 27 percent of officers say this is true of gangs often, very often, or all the time. Another 30 percent believe this to be true now and then, and 44 percent say this is true only rarely, very rarely, or never. By contrast, fully 58 percent believe that these sorts of issues motivate IAC activities often, very often, or all the time; 27 percent say this is true now and then; and only 14 percent say this is the case only rarely, very rarely, or never.

There are also differences in perceptions of how each organization contributes to the maintenance of prison security. While gangs are rarely seen by correctional officers as playing a positive role in the prison, this is not the case with IACs. About 29 percent of California officers believe that (p.255) some types of IAC activity at the prison where they work makes the prison less safe, and another 34 percent feel that it has no effect. However, more than a third (38 percent) believe that the IAC actually makes their prison safer. By comparison, only 4 percent of officers believe that gang-related activity, in response to inmate problems with staff or prison conditions, makes the prison safer; 22 percent believe it to have no effect, and a full 74 percent feel that this makes the prison less safe.

Figure 11.3 shows the relationship between officer perceptions of the proportion of inmates in IACs relative to the proportion of inmates in gangs, and both general prison violence (Figure 11.3a) and gang violence, specifically (Figure 11.3b). As the figures show, the higher the estimated proportion of participation in IACs relative to gangs at a given institution, the lower the estimated rate of each type of violence. Specifically, the ratio of inmate participation in IACs relative to gangs is negatively correlated with gang violence at  $-.40$ , and negatively correlated with general prison violence at  $-.35$ .

As we have already described, however, prison institutions differ along a variety of dimensions—security level in particular—that are likely to be correlated with both participation in IACs and gangs and also with prison violence. We address this in a series of multiple regressions, in which we control for various categories of confounders. Each is measured at the level of the prison institution. We first employ four

measures that help control for the risk of violence. These include the estimated number of different gangs at that institution (CCOS), the percentage of inmates classified at each security level, as dummy variables for Level I, II, and II (COMPSTAT), and overcrowding, measured as the proportion of housed inmates relative to the number of inmates for which an institution was designed (COMPSTAT). Our second set of variables helps to account for other types of inmate associations within the prison. These measures include levels of engagement by inmates in ILTAGs (COMPSTAT), Alcoholics Anonymous (COMPSTAT), Narcotics Anonymous (COMPSTAT), and veterans groups (COMPSTAT). Third, we include measures of formal program participation, such as academic programs (COMPSTAT), vocational programs (COMPSTAT), work assignments (COMPSTAT), and formal substance abuse treatment programs (COMPSTAT). Our last set of control variables captures basic measures of prison conditions: the extent to which dirt and litter are perceived as a problem (CCOS), the extent to which rodents and insects are a problem (CCOS), and a general subjective evaluation of the prison's physical condition (CCOS).

(p.256)

(p.257)

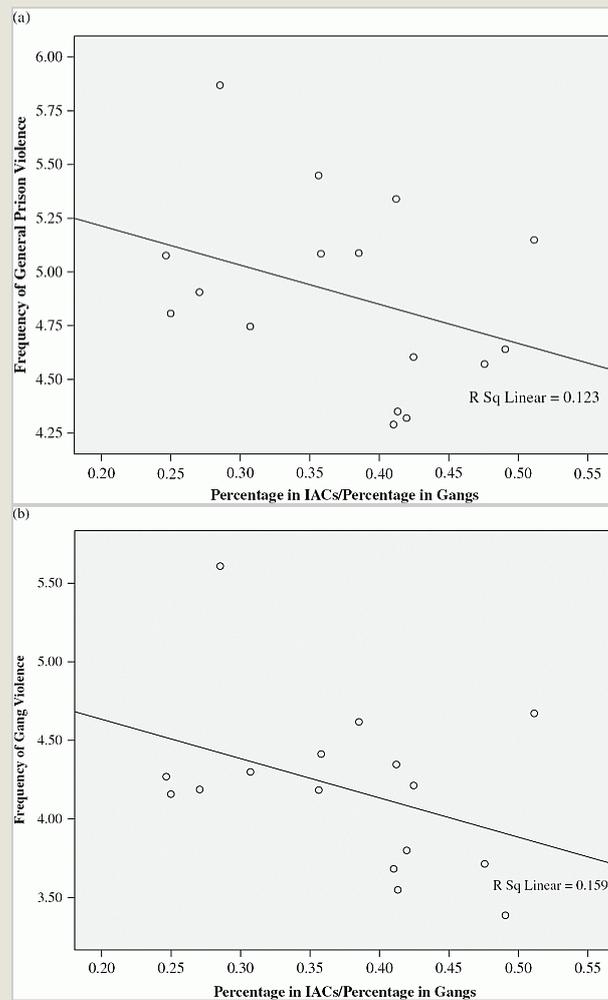


Figure 11.3. Violence and Proportional Participation in IACs and Gangs

11.3a. General Prison Violence

11.3b. Gang Violence

**Table 11.1. Modeling the Relationship between IAC Participation (and IAC/Gang Participation) and Prison Violence**

	Without Controls	With Controls for Risk of Violence	With All Controls
<b>Specification 1</b>			
<i>IV: Proportion in IACs</i>			

	Without Controls	With Controls for Risk of Violence	With All Controls
General violence	.01 (.006)#	-.011 (.004)*	-.009 (.007)
Gang-related violence	.026 (.020)	-.039 (.014)**	-.033 (.020)#
<b>Specification 2</b>			
<i>IV: Proportion in IACs/Proportion in Gangs</i>			
General violence	-.20 (.22)	-.13 (.28)***	-1.26 (.57)#
Gang-related violence	-3.01 (.57)***	-4.23 (.95)***	-3.5 (1.38)*

In multiple regressions (shown in Table 11.1), we estimate the relationships between our key independent variable—the estimated percentage of inmates involved in IACs, and also the percentage involved in IACs relative to the percent in gangs—and measures of both general prison violence and gang violence, specifically. We first estimate the simple bivariate relationships (shown in column I), then introduce controls for risk of violence (column II) and the full set of controls (column III). The results are generally confirmatory of our previous analyses. Greater participation in IACs, particularly in relation to the proportion of inmates estimated to be gang involved, is associated with decreased levels of both general and gang-related violence.

#### Individual Level Data on Inmate Councils and Safety

In these basic models, there appears to be a negative relationship between inmate councils in California and the incidence of prison violence, both gang and non-gang related. While not confirmatory, this should at least call into question the idea that participatory avenues for inmates diminish the security of the prison by increasing violence or gang activity. However, we might be concerned that officers' evaluations, which are the source of the data we have just described, may not be an accurate portrayal of inmate behavior, either in terms of IAC participation rates or real rates of violence. We might also be concerned that an analysis at the level of the institution does not accurately capture the individual-level behaviors at the root of our inquiry: inmate (p.258) participation in IACs, and inmate's engagement in violence. We therefore turn to our other source of data, the Bureau of Justice Statistics inmate survey, which reports perceptions of violence

and council participation from inmates themselves, and which is available at the level of the individual prisoner.

Our main outcomes of interest come from questions unique to this year of the survey. First, inmates were asked “how safe do you feel from being hit, punched, or assaulted by other inmates?” and given a choice of five response categories (safe, somewhat safe, neither safe nor unsafe, somewhat unsafe, unsafe). Slightly over half of inmates (54 percent) felt safe from physical assault, 20 percent felt somewhat safe, 8 percent felt neutral, 8 percent felt somewhat unsafe, and 11 percent reported feeling unsafe. Inmates were also asked about their participation in fights and the actual incidence of violence against them: “Since your admission, have you been in any fights or been hit or punched?” Of the total sample, about 22 percent of inmates reported that they had been in a fight or been assaulted. Unfortunately, and in contrast to the California data, the inmate survey did not seek to measure gang involvement or the frequency of gang activity at the facility.

In addition, inmates were asked about their involvement with various organizations and programs within the prison. Our main explanatory variable is whether the inmate was involved in one type of group in particular: inmate assistance groups (which include worker unions, advisory councils, inmate liaison groups, and prisoner counseling groups). Among the inmates in the sample, 8.2 percent reported participating in such a group, a proportion that did not significantly vary by security level or facility type. To compare, participation in other groups ranged from a high of one-third in bible clubs and one-third in groups like Alcoholics Anonymous to 15 percent in groups like Jaycees and Toastmasters, to a low of 5 percent in ethnic/racial groups like the NAACP.

In the analysis that follows and consistent with our institutional analysis from California presented above, we include a variety of controls that reflect differences in an individual’s risk of violence, as well as differences at the level of the facility where prisoners are housed. Although the BJS data do not include information about prison conditions and quality (i.e., overcrowding), we control for other factors related to the prison experience: housing type (dorm, individual cell, etc.); type of housed population (general population, administrative segregation, protective, etc.); number of people housed where you sleep; facility type (community based or (p.259) confinement); state or federal prison; gender of prison; security level; and region. We also control for inmate characteristics and risk of violence: participation in other programs and groups (job training, work assignments,

educational, religious groups and activities, life skills classes, substance abuse groups, ethnic/racial organizations, outside community activities, and arts and crafts); individual demographics (age, race, gender); offense category (violent, drug, property, public order); criminal history, prior incarceration and prior arrests; criminal justice status (sentenced, awaiting trial, etc.); and whether the individual was ever armed when committing crimes.<sup>59</sup>

**Table 11.2. Modeling the Relationship between Participation in Inmate Assistance Groups and Subjective Perceptions of Safety and Violence**

Outcome of Interest	Without Controls	With Controls for Risk of Violence	With All Controls
Subjective Perception of Security From Violence (“Feel Safe”)	.033 (.059)	.022 (.061)	-.092 (.066)
Been in a Fight, Hit, Punched in Prison	.470*** (.066)	.432*** (.073)	.117 (.084)
N	17,307	17,026	17,026

At the bivariate level, there does not appear to be a tradeoff between perceptions of physical security and inmate participation in councils, but neither is council participation related to diminished perceptions of threats to physical safety (see Table 11.2). Approximately 72 percent of inmates in councils felt safe or somewhat safe from physical assault compared to 74 percent of inmates who did not report participating in councils. The difference was not statistically significant or substantively meaningful. Explorations of these associations by security level or facility type did not reveal a difference in this general pattern. Introducing controls for features of the prison environment and risk of violence did not change this relationship. There does appear to be a positive relationship between participation in inmate assistance groups and being in physical altercations since admission to prison at the bivariate level. However, once controls for facility type and background characteristics of the inmate are introduced, there is no longer a statistically meaningful relationship.

### (p.260) Discussion

In this chapter, we have examined the question of whether participation in prison self-governance organizations is associated with higher rates of violence. Using three data sources, and at two levels of analysis, we find little evidence of a positive correlation. At the individual level, we find no statistically significant association between how safe inmates feel or whether they have been involved in physical confrontations and participation in inmate councils, worker groups (unions), liaison, or prisoner counseling groups. At the institution level, we actually find a *negative* relationship between officer perceptions of the proportion of inmates participating in inmate self-governance organizations and levels of both general violence and gang-related violence specifically. This relationship remains unchanged when a variety of controls are introduced. These findings are important, as the idea that allowing inmate advisory councils might jeopardize the safety and security of the institution has been used as a legal and theoretical justification for banning these types of organizations; the argument in *Jones v. North Carolina* and in other cases has frequently been that limiting association is necessary to secure safety and order within the prison. In our admittedly preliminary assessment, we find no compelling empirical evidence to support this claim. In fact, where a relationship does appear, it seems to point to a potentially positive role of IACs; as the proportion of inmates participating in advisory councils increases, prison violence appears to be less of a concern.

It might still be true that safety and self-governance are legitimately in conflict at some institutions and that these instances are not represented in these data. Most obviously, we might not see an association because inmates are not given the opportunity to participate in associations at particular prison institutions. In California, advisory councils are mandated by policy. However, prison administrators still maintain discretion to disband councils if they are seen as promoting or contributing to violence: "The membership of representatives or the activities of the entire council may be suspended when the warden determines that the representative or council presents a threat to facility security or the safety of persons, or that the representative's or council's actions are counterproductive to the best interest and welfare of the general inmate population."<sup>60</sup> Councils therefore might be banned in locations where they have been previously co-opted by gangs or used as locations for violent activity. At these places, we would not be able to see what happens if participation increases, because inmates do not have the opportunity to take part in (absent or limited) organizations.

(p.261) The analysis we have presented here is therefore just a first cut at an important set of questions, and begs nearly as many questions as it answers. First and foremost, we recognize a number of ways that the data employed here are imperfectly suited to our task. The CCOS data provide the only comprehensive measure we know of that specifically assesses levels of IAC participation across all of California's adult prisons. However, this measure is taken from a survey and so represents the subjective assessment of prison personnel. We would prefer a more objective measure, such as IAC meeting attendance, proportion of inmates casting votes in IAC elections, or other indicators taken from administrative records. Unfortunately, no such data are available. The individual data we employ here are likewise from surveys, and so are likewise potentially subject to biases, misreporting, and subjectivity.

We also have little information in our data about the character of participation in governance councils, or the quality of the councils themselves. It is not hard to imagine that participation can mean a range of things—from running for or holding office to regularly participating in IAC activities to little more than casting the occasional ballot when new leadership is elected—that have different consequences for how the council operates within the prison. Similarly, as we have already mentioned, some advisory councils might be well organized, respected, and impartial arbiters that play an important role within the prison; others may be weak, co-opted by gangs or by staff, and be generally dismissed by the prison administration rather than taken seriously as a part of how decisions are made. Understanding the nuances of how these organizations work would be a necessary precursor to a more robust analysis of their effects on violence and other outcomes.

And finally, the question of causality is key here, and unfortunately outside the scope of this chapter. Our data provide us with the ability to paint a broad picture of the descriptive relationship between IAC participation and violence. Despite having modeled this relationship with a host of controls, we cannot rule out the possibility of a confounding variable that both decreases violence and increases IAC participation. Similarly, we are certainly not able to untangle any direction of causality; to the extent that we see a significant correlation, we do not know whether more IAC participation leads to lower violence, or lower violence enables greater participation in IACs.

In light of this, our most pressing implication is a call for a renewed interest in the role that inmate self-governance organizations, as well as related associations like inmate unions, can and do play in the

operation (p.262) of American prisons. While the literature of the 1960s and 1970s provides more optimism than evidence on the wide range of effects that such organizations could have, we argue that there are compelling reasons to believe that self-governance organizations might indeed have the capacity to shape individual and institutional outcomes in important ways. In addition, Americans have long held that self-governance is a fundamental aspect of American citizenship that should be fiercely protected from unnecessary restriction. As de Tocqueville observed, local government is critical because individual participation in self-governance molds democratic citizens and safeguards democracy. The same, we would suggest, might well hold true for those in the nation's prisons.

More broadly, we would argue that the internal management and culture of prison institutions has been too long neglected as a topic of serious inquiry. As the United States neared the end of the first decade of the new century, fully one in every hundred American adults was behind bars. For racial minorities and the poor, the proportions in prison and jail are significantly higher. Thus, prisons and other criminal justice institutions have become a primary point of contact between citizens and the state, and a key part of the infrastructure of our nation's governance and democracy. Understanding the complex inner worlds of correctional institutions, and the role that prisons play in shaping violence and a host of other individual and social outcomes, remains a critical topic of inquiry.

### Notes

(p.263)

(p.265)

### Notes:

- (1.) Pew Center on the States, *One in 100: Behind Bars in America* (Washington, DC: The Pew Charitable Trust, 2008).
- (2.) Amy Lerman, *The Modern Prison Paradox* (Cambridge: Cambridge University Press, 2014).
- (3.) Malcolm M. Feeley and Jonathan Simon. The New Penology: Notes on the Emerging Strategy and Its Implications, *Criminology* 30, no. 339 (1992): 449-474
- (4.) Amy Lerman and Vesla Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control* (Chicago: University of Chicago Press, 2014).

- (5.) *Jones v. North Carolina Prisoners' Union*, 433 US 119 (1977).
- (6.) Lerman and Weaver, *Arresting Citizenship*.
- (7.) John J. DiIulio, *Governing Prisons* (New York: Simon and Schuster, 1990), 237.
- (8.) Lerman and Weaver, *Arresting Citizenship*.
- (9.) Ibid.
- (10.) Enver Solomon and Kimmett Edgar, *Having Their Say: The Work of Prisoner Councils* (London: Prison Reform Trust, 2004).
- (11.) J. E. Baker, "Inmate Self-Government," *Journal of Criminal Law, Criminology, and Police Science* 55, no. 1 (1964): 39-47.
- (12.) Elmer H. Johnson, "Potential of Inmate Self-Government," *Criminology* 15, no. 2 (1977): 165-178; Charles Stastny and Gabrielle Tyrnauer, *Who Rules the Joint?: The Changing Political Culture of Maximum-Security Prisons in America* (Lanham, MD: Lexington Books, 1982).
- (13.) Seth Allan Bloomberg, "Participatory Management: Toward a Science of Correctional Management," *Criminology* 15, no. 2 (1977): 149-163, 151.
- (14.) Stastny and Tyrnauer, *Who Rules the Joint?*, 54.
- (15.) Burt Useem and Peter Kimball, *States of Siege: U.S. Prison Riots, 1971-1986* (Oxford: Oxford University Press, 1991).
- (16.) Susan Blankenship, "Revisiting the Democratic Promise of Prisoners' Labor Unions," *Studies in Law, Politics and Society* 37 (2005), 241-269.
- (17.) Stastny and Tyrnauer, *Who Rules the Joint?*, 154.
- (18.) Ibid., 93.
- (19.) Christopher D. Berk, "On Prison Democracy: The Politics of Participation in a Maximum Security Prison." Accepted for publication at *Critical Inquiry*.
- (20.) Ibid.

- (21.) James L. Regens and William Hobson, "Inmate Self-Government and Attitude Change: An Assessment of Participation Effects," *Evaluation Quarterly* 2, no. 3 (1978): 455-479.
- (22.) Gresham M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (Princeton, NJ: Princeton University Press, 2007).
- (23.) Bradley B. Falkoff, "Prisoner Representative Organizations, Prison Reform, and Jones V. North Carolina Prisoners' Labor Union," *Journal of Criminal Law and Criminology* 70, no. 1 (1979): 42-56.
- (24.) Sidney Zonn, "Inmate Unions: An Appraisal of Prisoner Rights and Labor Implications," *University of Miami Law Review* 32 (1977): 613-635.
- (25.) Quoted in Regina Montoya and Paul Coggins, "Future of Prisoners' Unions: Jones v. North Carolina Prisoners' Labor Union," *Harvard Civil Rights - Civil Liberties Law Review* 13 no. 3 (1978):799-826. (1978): 801.
- (26.) Zonn, "Inmate Unions," 629.
- (27.) Ibid, 627.
- (28.) They argued that "prisoners eventually would be stripped of all constitutional rights, and would retain only those privileges that prison officials, in their 'informed discretion,' designed to recognize. The sole constitutional constraint on prison officials would be a requirement that they act rationally." Quoted in Zonn, "Inmate Unions," 629.
- (29.) Falkoff, "Prisoner Representative Organizations," 47.
- (30.) One case held that prisons had to allow legal communication from lawyers on union-related matters. Another upheld an inmate's right to wear a union pin. See Michael Mushlin, *Rights of Prisoners, St. Paul, MN: Thomson West* (Thomson West, 2002).
- (31.) United States Department of Justice, Bureau of Justice Statistics, *Survey of Inmates in State and Federal Correctional Facilities, 2004*, ICPSR04572-v1 (Ann Arbor: Inter-University Consortium for Political and Social Research [distributor], 2007-02-28), <http://doi.org/10.3886/ICPSR04572.v1>
- (32.) Enver Solomon, "Criminals or Citizens? Prisoner Councils and Rehabilitation," *Criminal Justice Matters* 56, no. 1 (2004): 24-25; Tom Murton, "Shared Decision Making as a Treatment Technique in Prison

Management," *Offender Rehabilitation* 1, no. 1 (1976): 17-31; Thomas P. Wilson, "Patterns of Management and Adaptations to Organizational Roles: A Study of Prison Inmates," *American Journal of Sociology* 74, no. 2 (1968): 146-157; Hans Toch, "Inmate Involvement in Prison Governance," *Federal Probation* 59, no. 2 (1995): 34. While journalistic, one account reveals many benefits: Alice Fishburn, "The Inmates Who May Hold the Key to the Prisons Dilemma" *The Times* (London), National Edition, 66-67 July 2, 2010. <http://www.thetimes.co.uk/tto/law/article2583373.ece>

(33.) Baker, "Inmate Self-Government"; Paul R. Comeau, "Labor Unions for Prison Inmates: An Analysis of a Recent Proposal for the Organization of Inmate Labor," *Buffalo Law Review* 21 (1971): 963-986.

(34.) Tom Watson, "Part 2: Alternative Methods and Problems, Bringing Complaints Through the Mens' Advisory Council," in *Prison Appeals System*, [www.oocities.org/three\\_strikes\\_legal/prison\\_appeals.htm](http://www.oocities.org/three_strikes_legal/prison_appeals.htm).

(35.) Ibid.

(36.) Solomon and Edgar, *Having Their Say*, 15.

(37.) Lerman and Weaver, *Arresting Citizenship*.

(38.) Solomon, "Criminals or Citizens?," 26.

(39.) Comeau, "Labor Unions," 985.

(40.) Luis Jorge DeGraffe, "Prisoners' Unions: A Potential Contribution to the Rehabilitation of the Incarcerated," *New England Journal on Criminal and Civil Confinement* 16, no. 2 (1990): 234.

(41.) Lerman and Weaver, *Arresting Citizenship*.

(42.) Blankenship, "Democratic Promise of Prisoners' Labor Unions," 261.

(43.) Ibid.

(44.) Solomon, "Criminals or Citizens?," 25.

(45.) DeGraffe, "Prisoners' Unions," 228.

(46.) Comeau, "Labor Unions," 976.

(47.) Sacha Darke, "Inmate Governance in Brazilian Prisons," *Howard Journal of Criminal Justice* 52, no. 3 (2013): 272-284.

(48.) Graeme Wood, "How Gangs Took Over Prison Councils," *The Atlantic*, October 2014.

(49.) David B. Kalinich and Stan Stojkovic, "Contraband The Basis for Legitimate Power in a Prison Social System," *Criminal Justice and Behavior* 12, no. 4 (1985): 435–451.

(50.) Solomon, "Criminals or Citizens?," 25.

(51.) California Department of Corrections and Rehabilitation, "California Code of Regulations: Title 15, Crime Prevention and Corrections" Subchapter 3: Inmate Councils, Committees, and Activity Groups, [http://www.cdcr.ca.gov/regulations/adult\\_operations/docs/Title15-2015.pdf](http://www.cdcr.ca.gov/regulations/adult_operations/docs/Title15-2015.pdf).

(52.) Ibid.

(53.) Ibid.

(54.) Lerman, *Modern Prison Paradox*.

(55.) US Dept. of Justice, Bureau of Justice Statistics, and US Dept. of Justice, Federal Bureau of Prisons. *Survey of Inmates in State and Federal Correctional Facilities, 1997*. Compiled by US Dept. of Commerce, Bureau of the Census. ICPSR ed. (Ann Arbor: Inter-University Consortium for Political and Social Research [producer and distributor], 2000).

(56.) There are eleven institutions in the state of California that admit male inmates with a Level II security classification. These include Avenal State Prison (ASP), California Correctional Center (CCC), California Correctional Institution (CCI), California Men's Colony (CMC), CA Rehabilitation Center (CRC), San Quentin State Prison (SQ), Folsom State Prison (FOL), CA Substance Abuse Treatment Facility (SATF), Chuckawalla Valley State Prison (CVSP), Sierra Conservation Center (SCC), and California State Prison, Solano (CSP-SOL).

(57.) Exceptions to this are CRC, where the drug rehabilitation program accepts a large number of inmates committed on short sentences for drug crimes, and SCC, which houses a higher percentage of property crime offenders deemed eligible for training in firefighting. In both cases, however, these populations are housed separately.

(58.) County of commitment varies between the populations of each prison, as the state attempts to place inmates as close to their county of residence as possible. For example, San Quentin, located in the northern part of the state near the San Francisco Bay, reports 72.8 percent of its inmates committed from that part of the state. Nearby CCC and Solano report 56 percent and 75.3 percent respectively from the Bay Area and North and Central areas combined. Conversely, Southern California prisons predominantly house Southern California inmates, at levels of 89 percent, 76.5 percent, and 77.6 percent for CCI, CMC, and CRC respectively.

(59.) Due to missingness on this last item, we run models both with and without it. Substantive results do not change.

(60.) California Department of Corrections and Rehabilitation, Subchapter 3 Inmate Activities.

