Special Edition

Informal dynamics of survival in Latin American prisons

Advancing Security and Human Rights by the Controlled Organisation of Inmates

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The abysmal situation in Latin America prisons has been widely documented by international human rights mechanisms, scholars, and civil society organisations.[1] Persistent overcrowding, unsanitary conditions, violence by authorities and other prisoners, and corruption are prevalent. Riots, hostage crises and fires have claimed the lives of hundreds in recurring incidents of mass death from Chile to Mexico.[2] The prison crisis in the Americas has intensified over the past two decades as rates of incarceration have risen steadily (and well beyond capacity) throughout the Americas. While in 2000, there were 648,523 people incarcerated in Central and South America, by 2014, this number had more than doubled, to 1,338,042.[3]

In practice, prison governance in the Americas has been characterised by two extremes. On the one hand are detention centres that operate as *de facto* systems of uncontrolled and abusive self-governance, in which frequently abusive prisoners exert effective control over delimited spaces, whether they be cellblocks, units or entire detention centres. Authorities are content to ensure external security. In this model, prison guards and higher authorities are frequently complicit in a wide range of corrupt schemes — in which virtually all aspects of ordinary life must be 'purchased' in the illicit market run by some prisoners in collusion with corrupt guards.[4] At the other extreme, a number of institutions follow a model of incarceration based on the United States' model of exerting full (depersonalised, dehumanising) control over inmates. Neither of these models is in accord with international human rights norms, which require that the deprivation of liberty not imply other, unnecessary restrictions on rights. Worse, these extreme solutions fail to provide the minimum conditions necessary for the rehabilitation and resocialisation of prisoners.

Drastic changes in prison management are both necessary and possible. This article argues that a new paradigm in prison management, based on the controlled organisation of inmates, holds the potential to revolutionise prisons in the Americas, rendering them rights-respecting, rehabilitative and cost-effective. To do so, we begin by considering existing taxonomies of prison systems — hierarchical, differentiated, and autonomous[5] — and prison management models — the control model, the responsibility model, and the consensual model.[6] We then briefly summarise relevant international human rights norms on the deprivation of liberty, which establish that inmates be subjected to the least restrictive regime necessary in order to guarantee safety, as well as provisions on respectful detention contained in the Third Geneva Convention. The article then turns to several successful examples of the model that we propose. We consider its written regulation in Costa Rica and Panama, as well as its practical functioning in a prison in Peru visited by the authors. We conclude with the identification of common elements in the controlled organisation of inmates.

A conceptual framework: theories of prison systems and prison management

In 1975, Eric Steele and James Jacobs provided a taxonomy of prison systems that remains relevant to understanding the underlying logic of the most prevalent penitentiary regimes. Steele and Jacobs categorised prison systems according to the purpose and logic of their institutions,[7] which were the result of contrasting assumptions about 'the etiology of crime, the treatment

1. For an overview, see Inter-American Commission on Human Rights (IACHR), (2011) *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, Washington, D.C.
2. See press releases from the Inter-American Commission on Human Rights on this topic:
   http://www.oas.org/en/iachr/pdl/press_releases/default.asp.
3. International Centre for Prison Studies, World Prison Brief, http://www.prisonstudies.org/world-prison-brief.
4. Another possible effect of such arrangements can be the facilitation of the involvement of inmates in criminal activities outside of prison. The IACHR has expressed concern about these practices: IACHR, (2011) para. 97 (see n. 1).
5. Steele, E. H., and Jacobs, J. B., (April 1975) 'A Theory of Prison Systems', *Crime and Delinquency*, 21, 2: 149-162.
6. DiIulio, Jr., J. J. (1987) *Governing Prisons: A Comparative Study of Correctional Management*, New York: The Free Press.
7. Steele and Jacobs, 1975, p. 149 (see n. 5).

of criminals, and the maintenance of order.'[8] Steele and Jacobs differentiated between a hierarchical, a differentiated, and an autonomous model.

For Steele and Jacobs, the hierarchical prison system is based on an assumption that criminality is untreatable. As a result, it does not provide for rehabilitation of offenders, but instead, maximises order and control through a highly coercive punishment-and-reward incentive structure. It places obedient inmates in lower security settings, and transfers disruptive ones to higher security prisons.[9] In contrast to this model, Steele and Jacobs identified a differentiated system, founded on the notion that criminality can be diagnosed and treated.[10] The placement of inmates in these institutions is thus guided by their treatment needs instead of by disciplinary considerations.[11] The third model Steele and Jacobs described is the autonomous system, which is based on a premise of 'benign neglect'[12] and holds inmates for 'a relatively long period at low cost' at remote locations.[13] It does not provide for the treatment of inmates, for a variety of reasons that range from the impossibility or undesirability of forcing prisoners to change, to budgetary considerations.

A second categorisation considers governance practices. In 1987, political scientist John Dilulio described three distinct managerial approaches based on his observations of U.S. state prisons: the control model, the responsibility model, and the consensual model.[14] The control model is based on a logic of coercion, and follows a punishment-and-reward incentive structure in which even minor offenses are subject to harsh sanctions.[15] In contrast, institutions run according to the responsibility model aim to place inmates in the least restrictive setting possible, maximising a sense of responsibility for their actions.[16] These instil responsibility by providing inmates with 'a greater voice in prison affairs'[17] — and by minimising symbols of authority.[18] The consensual model fuses elements of the previous two models. Like the responsibility model, it is based on a power-balance between correctional officers and inmates and gives inmates a voice in prison affairs, as well as limited autonomy with respect to personal decisions, such as grooming.[19] However, its stronger emphasis on organisational hierarchy is more consistent with the control model.[20]

International standards on the deprivation of liberty: only strictly necessary restrictions

The human rights norms relevant to prisons that are applicable throughout Central and South America are found in the United Nations' International Covenant on Civil and Political Rights (ICCPR)[21] and the Organization of American States' principal rights treaty, the American Convention on Human Rights (American Convention).[22] These norms have striking similarities.

Both conventions hold that the rights they establish apply, without distinction, to all people within each State's jurisdiction,[23] and that these rights must not be restricted more than is strictly necessary.[24] Moreover, they explicitly require that States apply the legal provision (whether by treaty, national constitution or ordinary law) that provides the greatest protection of human rights.[25] In practice, this means that international human rights law requires that these rights are applicable to imprisoned and free people alike, and that inmates be subjected to the least restrictive regime necessary to guarantee safety.

The conventions include other important norms, too. In addition to the absolute ban on torture and cruel treatment,[26] they establish that inmates be treated 'with respect for the inherent dignity of the human person,'[27] and explicitly state that the aim of the deprivation of liberty as a punishment is the 'reform and social rehabilitation of the prisoners.'[28]

8.   Id., p. 154.
9.   Id., pp. 151-2.
10. Id., p. 154.
11. Id., p. 156.
12. Id., p. 158.
13. Id., p. 160.
14. Dilulio, 1987 (see n. 6).
15. Id., pp. 105-8.
16. Id., p. 118.
17. Id., p. 120.
18. Id., p. 118.
19. Id., p. 131.
20. Id., p. 128.
21. International Covenant on Civil and Political Rights, (1966), ratifications:
     https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en.
22. American Convention on Human Rights (1969), ratifications:
     http://www.oas.org/dil/treaties_B32_American_Convention_on_Human_Rights_sign.htm.
23. Art. 2 ICCPR; art. 1 American Convention.
24. Art. 5 ICCPR; art. 29 American Convention.
25. Art. 5(2) ICCPR; art. 29(b) American Convention.
26. Art. 4(2) and 7 ICCPR; art. 5(2) American Convention
27. Art. 10(1) ICCPR (which also adds 'humanity'); art. 5(2) American Convention.
28. Art. 5(6) CADH; art. 10(3) ICCPR.

The ICCPR adds the treatment of inmates to this purpose.[29]

From this, we can conclude that of the models outlined above, only Jacobs and Steele's differentiated prison system, centred on the treatment of inmates, complies with international human rights norms. In terms of prison management systems, DiIulio's responsibility model, which places inmates in the least restrictive setting possible and gives them a voice in internal affairs — and possibly even the consensual model, with its greater emphasis on order — are most consistent with these norms. It would be much harder to justify the application of a hierarchical or control model under international human rights law, save in exceptional circumstances.

Third Geneva Convention: an interesting framework for respectful detention

Another valuable set of standards on humane detention can be found in the Third Geneva Convention Relative to the Treatment of Prisoners of War.[30] The Geneva Conventions, designed to regulate war, include detailed norms on the treatment of those captured during battle. While these provisions do not apply to prisoners in the ordinary penitentiary system,[31] they provide carefully deliberated[32] and widely respected[33] norms that provide an interesting framework for rights-based detention regimes.

These norms are based on the respect for prisoners 'and their honour.'[34] The Third Geneva Convention establishes, for instance, that liberty of movement should be restricted only insofar as necessary,[35] and that the 'practice of intellectual, educational, and recreational pursuits' should be encouraged.[36] It also contemplates allowing prisoners to freely and periodically elect representatives, who must be approved by authorities.[37] These representatives, who may be assisted by advisors,[38] are tasked with liaising with authorities, furthering

prisoners' 'physical, spiritual and intellectual well-being,'[39] and may coordinate a 'system of mutual assistance'[40] to the extent that such a system is developed by prisoners. Authorities must facilitate such activities.[41]

Although these norms are not binding outside the context of armed conflict, they provide useful guidelines to orient the principles for the governance of detention centres more generally. In this regard, the core principle that animates the Third Geneva Convention — respect for prisoners — would be transformative if applied to ordinary detention centres. Below, we consider prison experiences in which this guiding principle appears to have been implemented, if not perfectly, at least to a significant degree.

Experiences with controlled organisation of inmates: communication and respect lead to pacification

There are several interesting experiences with the controlled organisation of inmates in Latin America. Some countries, like Costa Rica and Panama, have established normative frameworks for the facilitation of these activities, while in at least one prison in Peru, there is a well-established but officially unregulated practice of controlled prisoner organisation.

Costa Rica

The Costa Rican penitentiary system held some 17,440 prisoners, divided over 33 detention facilities, in September 2014. Its prisons have an occupancy rate of 139.4 per cent. Out of every 100,000 inhabitants of Costa Rica, 352 are imprisoned. Since 2000, the prison population has almost doubled.[42]

In 1996, the Costa Rican Ministry of Justice issued a directive to regulate inmate organisations,[43] acknowledging the existence of such organisations exist and recognising the positive contributions these can make to inmates' well-being[44] and

29. Art. 10(3) ICCPR.
30. Geneva Convention (III) Relative to the Treatment of Prisoners of War (1949), entered into force in 1950.
31. The 1960 Commentary to the Convention indicated that 'the internment of prisoners of war in penitentiaries is in principle prohibited because of the painful psychological impressions which such places might create.'
32. The 1949 Convention replaced an earlier comprehensive document from 1929. Before then, the Hague Conventions of 1899 and 1907 contained provisions regulating the treatment of prisoners of war.
33. The Third Geneva Convention has 196 States parties.
34. Art. 14 GC III.
35. Art. 21 GC III.
36. Art. 38 GC III.
37. In case of refusal, authorities must communicate their reasons. Art. 79 GC III.
38. Art. 81 GC III.
39. Art. 80 GC III.
40. Id.
41. Art. 81 GC III.
42. World Prison Brief (see n.3).
43. Dirección General de Adaptación Social, 'Instructivo para regular las organizaciones de personas privadas de libertad y su relación con la administración penitenciaria,' (27 Nov. 1996), published in *La Gaceta No. 88*, 9 May 1997.
44. Id, preamble, art. 4.

development.[45] The regulation allows for two types of inmate organisation: assemblies,[46] in which a large number of inmates participate, and committees,[47] consisting of three to five delegates chosen by the assembly to carry out specific activities.

The regulation enables the provision of institutional support to inmate organisations[48] while establishing considerable control by the prison's Technical Council (TC), an interdisciplinary body composed of the prison director, the director of security, and representatives of each area of expertise (such as psychologists) in the institution.[49] Organisations are required to send the TC quarterly communications about their planned activities.[50] A prison official designated as permanent liaison to inmate organisations is present during all meetings and ensures that all applicable rules are respected.[51] Organisations are also allowed to organise fundraising activities, under the strict supervision of prison authorities.[52] By means of such activities, inmates for example financed a new gym in San Sebastián prison.[53]

Importantly, the regulation establishes a democratic, participative framework for the operation of inmate organisations, which limits the possibility of abuse of power. It establishes, for instance, that those elected to the committees serve a one-year term and cannot immediately be re-elected,[54] that there will be no hierarchy within the committees, and that all members are allowed to speak and vote.[55] Moreover, it requires a written registry of decisions (taken by simple majority).[56]

Although, strictly, the TC cannot prevent the establishment of organisations, it can prevent them from operating: organisations require TC approval for

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all meetings and activities they wish to organise.[57] The extent to which inmate organisations are active, is thus highly dependent on prison authorities' willingness to facilitate their operation. During a February 2016 visit, we observed active inmate organisations in San Sebastián prison. By contrast, in the La Reforma complex, these groups were much less active and successful. For example, inmates at La Reforma complained about embezzlement by members of the committee.[58] An in-depth study of how these organisations operate in different establishments would be highly recommended.

Panama

In January of 2015, Panama held some 15,508 prisoners in 24 establishments. Like Costa Rica, it has a high prison population rate: 352 per 100,000 inhabitants. Its general occupancy level is 111.1 per cent.[59]

In February of 2016, the national prison director circulated a regulation among prison directors.[60] Although more limited and less detailed than the Costa Rican norm, it allows for the establishment of committees in prisons to propose actions and present petitions to prison authorities, and to serve as a link between authorities and inmates.[61] These committees will consist of a maximum of three representatives (with two substitutes each) per prison unit represented and are to be elected for a period of one year by means of a secret vote.[62] Committees will meet bi-weekly.[63]

The regulation emphasises that these committees can only 'propose and inform;'[64] the development of lucrative activities, as in Costa Rica,

45. Id, arts. 16, 22.
46. Id, arts. 5-9.
47. Id, arts. 10-29.
48. Id, arts. 8, 13, 16, 23-25, 30-38.
49. Reglamento Técnico del Sistema Penitenciario, No. 33876-J.
50. Instructivo (see n. 43), art. 351 Id, arts. 13, 23-25.
52. Id, arts. 31-34, 39.
53. Interviews, 16 Feb. 2016.
54. Instructivo (see n. 43), art. 18.
55. Id, art. 17.
56. Id, art. 21.
57. Id, art. 3.
58. Interviews, 18 Feb. 2016.
59. Word Prison Brief (see n.3). However, this January 2015 number reflects the system's official capacity. It included 5504 places in new prison complex La Gran Joya, which had not been populated yet. Without counting the then-empty La Gran Joya, Panama's prison occupancy level was 184%.
60. Reglamento general sobre formas de participación de las personas privadas de libertad, http://www.sistemapenitenciario.gob.pa/sites/default/files/REGLAMENTO%20DE%20PARTICIPACI%C3%93N%20DE%20LOS%20PRIVADOS%20DE%20LIBERTAD.pdf.
61. Id, arts. 1-3
62. Id, art. 9.
63. Id, art. 5.
64. Id, art. 7.

does not seem to be allowed, nor is it clear how much participation authorities have in committees' activities. However, as this is a new regulation, it will be interesting to monitor its effective application.

Peru

Another example of the controlled organisation of inmates is one functioning in practice, without official regulation, in the all-male prison of San Pedro de Lurigancho (Lurigancho) in Peru. The prison is severely overcrowded: in November 2015, it held 9,885 inmates[65] in a centre with stated capacity for 3,204.[66] At any given time, there are about 30 guards and 120 police officers working in the complex — or one official per 66 inmates.[67]

Lurigancho has a long history of violence and conflict.[68] In 1986, it was the stage of one of Peru's most violent prison revolts, which cost the lives of 126 people[69] — more than 100 of whom were killed extra-judicially by Peruvian armed forces.[70] The State virtually abandoned Lurigancho between 1987 and 1992, securing only the perimeters of the prison. During those years, no guards were present inside the compound and the State did not provide food nor medicine.[71] Although a certain form of inmate organisation with elected leaders existed,[72] the absence of the State likely spurred a more sophisticated organisation. This situation was initially uncontrolled by authorities. As a result, the strongest, most respected criminals, *taitas* (who moreover controlled the drug trade) were the real leaders, and Lurigancho remained rife with violence and abuse.[73]

This situation has changed considerably over the past decade: Lurigancho has been transformed from an institution characterised by rampant violence in a setting of unhygienic anarchy, to a controlled system in which authorities and inmates communicate and

> The State virtually abandoned Lurigancho between 1987 and 1992, securing only the perimeters of the prison.

foster non-violent coexistence within the prison. This situation of calm enables inmates to move freely within the common areas of the prison compound, where they can work, study, socialise, and buy food and household items in the market area. All this further reduces tensions.

Both authorities and inmates assert that the current peaceful coexistence in Lurigancho is the result of its governance structure, which more closely resembles that of a town or neighbourhood than most detention centres. Lurigancho's inmates are housed in 24 pavilions, which generally hold between 400 and 700 inmates. Each pavilion elects a team of representatives or deputies (*delegados*), led by a single, general delegate (d*elegado general*) who ensures that the pavilion operates smoothly.[74] Each representative or deputy (generally, nine in all) is responsible for a specific aspect of community life: food, budget, discipline and order, cleaning and infrastructure, sports, health, education, legal affairs, and culture. These deputies, in turn, work with a small team of aides. Since the State provides only some basic supplies, inmates pay a weekly quota to fund these activities. As a result, living conditions have improved markedly: the buildings are tiled and freshly painted, the structures are clean and orderly, and meals are varied.[75]

The prison director and the pavilion representatives currently meet regularly (typically once a week) to discuss issues such as discipline, visiting policies, and ordering building supplies. Additionally, the pavilion representatives regularly meet amongst themselves. Every year, they elect a leadership committee for the entire prison, consisting of four people: a general representative, a representative for issues related to food, one for the budget, and one for order and discipline. This leadership committee liaises directly with

65.   Information from prison authorities.
66.   Instituto Nacional Penitenciario, (Aug. 2015) *Informe Estadístico Penitenciario*, Lima: Ministerio de Justicia y Derechos Humanos, p. 11, http://www.inpe.gob.pe/pdf/agosto_15.pdf.
67.   Information from prison authorities.
68.   See José Luis Pérez Guadalupe, (2000) *La construcción social de la realidad carcelaria*, Lima: Pontificia Universidad Católica del Perú, pp. 170-224.
69.   See Alan Riding, (Sep. 16, 1986) 'Peru's Prison Massacres: Can the Truth Come Out?', *New York Times*. Available at http://www.nytimes.com/1986/09/16/world/peru-s-prison-massacres-can-the-facts-come-out.html?pagewanted=all.
70.   Comisión de Verdad y Reconciliacion, p. 766; description of occurrences on pp. 737-768. Available at http://www.cverdad.org.pe/ifinal/pdf/TOMO%20VII/Casos%20Ilustrativos-UIE/2.67.FRONTON%20Y%20LURIGANCHO.pdf.
71.   Pérez Guadalupe (2000), p. 36 (see n. 68).
72.   Id., p. 38; interviews, Nov. 2014 and 2015.
73.   Pérez Guadalupe (2000), pp. 170-224 (see n. 68).
74.   Some pavilions hold annual elections by secret ballot, supervised by prison authorities. Others elect their leaders, who stay on until they lose legitimacy or leave Lurigancho, by consensus.
75.   Interviews, Nov. 2014 and 2015.

prison authorities. All these regular meetings have had important results in reducing violence. For example, according to inmates, pastoral workers and authorities, physical abuse and rape have been almost eliminated from Lurigancho.[76]

Conversations with inmates, authorities, and NGO workers in the prison lead us to believe there are a number of essential elements to this unregulated transformation. First, since the State re-established its presence in Lurigancho, prison directors have opted to work *with*, rather than *against*, these structures of inmate organisation — probably at least partially out of necessity, since the prison remains severely understaffed. Second, authorities have regularly transferred out the most disruptive inmates to protect Lurigancho's non-violent coexistence. Third, communication between authorities and inmates has been made a priority and the prison director is often present inside the prison, instead of in his office.[77]

This is not to say that all problems have been solved in Lurigancho. It is certainly undesirable that inmates themselves are required to pay to live and eat in a State-run prison. Those who are unable to pay have often been expelled from their pavilions and forced to stay in the 'no-frills' pavilion run by prison authorities. Corruption has not been eradicated. However, the enormous improvements that have already been made suggest that more positive changes are possible.

Preliminary conclusions regarding controlled organisation of inmates

Although more study is needed, reflection on the norms and practice as outlined above allows us to identify several basic, common elements in prison management systems that incorporate the controlled organisation of inmates:

1. Prison authorities are committed to creating an environment that is respectful, safe, and rehabilitative for prisoners, with as few restrictions to human rights as possible.
2. Either organically, or by legislation or regulation, norms and guidelines that set parameters for inmate engagement in governance are established.

3. The creation of a structure of inmate representatives[78] facilitates communication between inmates and authorities.
4. Both authorities and inmates value and nurture the mechanisms for communication and constructive collaboration.
5. The organisation of inmates increases communication between (groups of) inmates, which is likely to aid peaceful coexistence.
6, When internal efforts prove to be insufficient to contain disruptive inmates, such inmates might be transferred to other centres to maintain a peaceful coexistence in the prison.[79]
7. Inmates' engagement in educational and professional activities is actively encouraged, which aids rehabilitation and further reduces tensions.
8. The controlled organisation of prisoners helps to maintain order and provide services inside the prison, such as the cleaning and improvement of installations. This significantly improves detention conditions, which, in turn, may improve interpersonal relations in the detention centre.
9. Constructive activities also help to instil a sense of responsibility and purpose in inmates. This might contribute to rehabilitation.
10. Contacts with the outside world are facilitated where possible: visiting policies are expanded and outside (religious and social) groups are welcomed in, to develop activities. This 'normalisation' is likely a key element in prisoners' resocialisation and rehabilitation.

It follows from international human rights norms that the least restrictive setting must be applied in detention centres. The experiences discussed above suggest that the prison management systems that have incorporated the controlled organisation of inmates, have increased communication between inmates and between inmates and authorities, which has led to an improvement in detention conditions in these centres. The implementation of such systems in other prisons would be an important, attainable step that has the potential to transform prisons into institutions that are less violent, less abusive, and thus more rights-respecting and rehabilitative.

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76. Interviews, Nov. 2015.
77. Interviews, Nov. 2015.
78. Although the results of inmate elections should in principle be respected, it might be desirable for prison authorities to have effective veto power over the designation of representatives — for example, where these are demonstrably engaged in illicit activities — or the possibility to decide to not work with them, like in Costa Rica.
79. It might thus be necessary to maintain a number of prisons with a more restrictive environment for prisoners not willing to follow (community) rules.