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## Pran Justice: Social Order, Dispute Processing, and Adjudication in the Venezuelan Prison Subculture

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# Pran Justice: Social Order, Dispute Processing, and Adjudication in the Venezuelan Prison Subculture

Manuel A. Gómez\*

*This article discusses the self-regulation of social life by inmates inside a Venezuelan prison. I focus on the development and use of intra-group indigenous norms, and institutions and processes, to handle individual and collective disputes arising out of social interactions between inmates, including the adjudication and enforcement mechanisms that ensure the effectiveness of the system. This article contributes to the emerging literature on private governance vis-à-vis state regulation and the factors that contribute to foster law-abiding behavior among those who are routinely seen at odds with the official legal system.*

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## INTRODUCTION

A recent cover of Time magazine depicts a group of raggedy half-naked inmates sitting in a crowded cell at a police station in Venezuela's capital, with a caption that reads, "Venezuela is dying."<sup>1</sup> The black and white picture, taken through the deteriorated metal bars of a holding cell, offers just a glimpse of the dire situation of the criminal justice system in that country. The deep crisis that affects Venezuela is well documented, and the situation seems to be getting worse at a fast pace. From the recent malaria epidemic, to the scarcity of food and medicines, to the rampant crime rates, to and the decay of the country's most basic infrastructure, the once prosperous South American democracy appears to be on the verge of a humanitarian crisis.<sup>2</sup> Venezuela's dramatic journey from riches to rags in the last two decades and the country's abysmal decline—despite being one of the largest oil producers in the world—is now perplexing to many.<sup>3</sup>

The situation of the country's prison system is one of the many signs of institutional decay.<sup>4</sup> Several international organizations, NGOs, and other experts have reported the dramatic conditions of Venezuela's jails in terms of being overcrowded, understaffed, and saturated with corruption and crime.<sup>5</sup> The inmate population has grown, prison-related violence has spiraled out of control, and the perception is that the government has lost its grip on the situation.<sup>6</sup>

1. Ioan Grillo, *Venezuela is Dying*, TIME, Aug. 22, 2016, at cover; see also Ioan Grillo, *Inside the Hell of Venezuelan Police Prisons*, TIME (June 8, 2016), <http://time.com/4360758/inside-the-hell-of-venezuelan-police-prisons/> [<https://web.archive.org/web/20160608165610/http://time.com/4360758/inside-the-hell-of-venezuelan-police-prisons/>].

2. *Venezuela: Stubborn Politics Accelerate Catastrophic Humanitarian Crisis*, AMNESTY INT'L (June 10, 2016, 5:00 PM), <https://www.amnesty.org/en/latest/news/2016/06/venezuela-stubborn-politics-accelerate-catastrophic-humanitarian-crisis/> [<https://perma.cc/YA67-A8MH>].

3. Rick Gladstone, *How Venezuela Fell into Crisis, and What Could Happen Next*, N.Y. TIMES (May 27, 2016), <http://www.nytimes.com/2016/05/28/world/americas/venezuela-crisis-what-next.html>; see also Gabriel Hetland, *How Severe is Venezuela's Crisis?*, NATION (June 22, 2016), <https://www.thenation.com/article/how-severe-is-venezuelas-crisis/> [<https://web.archive.org/web/20160623163259/https://www.thenation.com/article/how-severe-is-venezuelas-crisis/>]; Gillian B. White & Bourree Lam, *What's at Stake in Venezuela's Economic Crisis*, ATLANTIC (July 5, 2016), <http://www.theatlantic.com/business/archive/2016/07/venezuela-economic-crisis/490031/> [<https://perma.cc/VE73-EBRT>].

4. *World Report: Venezuela* (2017), HUM. RTS. WATCH, <https://www.hrw.org/world-report/2017/country-chapters/venezuela> [<https://perma.cc/537A-RZ5D>] (last updated 2018).

5. See generally COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, INFORME SOBRE LOS DERECHOS HUMANOS DE LAS PERSONAS PRIVADAS DE LIBERTAD EN LAS AMÉRICAS (2011), <https://www.oas.org/es/cidh/ppl/docs/pdf/ppl2011esp.pdf> [<https://perma.cc/2NL7-TPZZ>]; OBSERVATORIO VENEZOLANO DE PRISIONES, INFORME GENERAL SOBRE LA SITUACIÓN CARCELARIA EN VENEZUELA (2015), <http://oveprisiones.org/web/wp-content/uploads/Informe-General-Octubre-2015-.pdf> [<https://web.archive.org/web/20160207141650/http://oveprisiones.org/web/wp-content/uploads/Informe-General-Octubre-2015-.pdf>] [hereinafter OVP 2015 REPORT].

6. *Entregaron Informe al Parlamento Sobre Crisis Penitenciaria en Venezuela*, NACIONAL (Aug. 24, 2017, 1:34 PM), [http://www.el-nacional.com/noticias/asamblea-nacional/entregaron-informe-parlamento-sobre-crisis-penitenciaria-venezuela\\_200339](http://www.el-nacional.com/noticias/asamblea-nacional/entregaron-informe-parlamento-sobre-crisis-penitenciaria-venezuela_200339) [<https://perma.cc/AV7H-CNAJ>].

In the late nineties, some efforts were made to ameliorate the condition of the prisons and the entire criminal justice system through a legislative overhaul, but the results were insignificant at best.<sup>7</sup> The centerpiece of this effort was an ambitious reform of the Code of Criminal Procedure. The reform instituted the jury system, expanded prosecutorial powers, reduced the length of pre-trial detention, and included other provisions aimed at improving the criminal justice system overall.<sup>8</sup> By instituting an adversarial, oral, and speedy procedure, the new Code was supposed to “create a more efficient and equitable criminal justice system, which would provide legal certainty and would contribute to the fight against crime.”<sup>9</sup> The long anticipated Code, which was officially titled Organic Code of Penal Procedure, was finally enacted in 1998. The government vowed that it would bring a swift solution to the most critical problems of the Venezuelan criminal justice system.<sup>10</sup>

Unfortunately, the newly minted legislation and related policies did not produce the intended results.<sup>11</sup> At the same time the 1998 Code was enacted, the rate of violent crimes continued to increase exponentially.<sup>12</sup> The reform had to be reversed or retooled at least twice within the next five years in order to adapt it to the reality of the Venezuelan society, but even then, the situation worsened.<sup>13</sup> The astronomical rates of pre-trial detention have continued, incarceration is still used as the only means of official punishment, the jury system has been poorly implemented, and the prison system has collapsed.<sup>14</sup> Furthermore, the exacerbation of the political crisis and an upsurge in the murder rate—to one of the highest in Latin America—has aggravated an already difficult situation.<sup>15</sup>

In terms of the country’s inmate population, the average maximum capacity of the existing penitentiaries almost quadrupled in Venezuela in 2015.<sup>16</sup> In some cases, the overcrowding level reached an astronomical figure of 918%.<sup>17</sup> Table One below shows the overpopulation level in seven Venezuelan penitentiaries for 2015.<sup>18</sup>

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7. Andrés Antillano, *La Reforma Policial en Venezuela*, 16 CIVITAS – REVISTA DE CIÊNCIAS SOCIAIS 625, 626 (2016).

8. Luisa Leal & Adela García, *La Reforma de la Justicia Penal en Venezuela: Un Punto de Vista Criminológico*, 30 CAPÍTULO CRIMINOLÓGICO 20, 20 (2002).

9. Carmen Alguíndigue & Rogelio Pérez Perdomo, *The Inquisitor Strikes Back: Obstacles to the Reform of Criminal Procedure*, 15 SW. J. INT’L L. 101, 104 (2008-2009).

10. Pablo Leonte Han Chen, *Algunas Reflexiones Sobre la Reforma al Código Orgánico Procesal Penal Venezolano (Agosto, 2000)*, 29 CAPÍTULO CRIMINOLÓGICO 86, 87 (2001).

11. Alguíndigue & Perdomo, *supra* note 9, at 109.

12. *Id.*

13. *Id.*

14. OVP 2015 REPORT, *supra* note 5, at 10.

15. Kevin Rawlison, *Global Homicide Rate Rises for First Time in More than a Decade*, GUARDIAN (Dec. 7, 2017), <https://www.theguardian.com/world/2017/dec/07/global-homicide-rate-rises-first-time-decade-venezuela-jamaica> [<https://perma.cc/GWE6-CY9J>].

16. See *World Prison Brief: Venezuela*, INST. CRIM. POL’Y RES., <http://www.prisonstudies.org/country/venezuela> [<https://perma.cc/U4LM-FNQZ>] (last visited Apr. 18, 2018).

17. OVP 2015 REPORT, *supra* note 5, at 11.

18. *Id.*

**Table 1**  
**Overpopulation in Seven Venezuelan Penitentiaries (2015)**

<b>Penitentiary</b>	<b>Percentage of overpopulation</b>
Internado Judicial de Carabobo	132%
Penitenciaria General de Venezuela	434%
Internado Judicial de Anzoátegui	189%
Centro Penitenciario El Dorado	280%
Internado Judicial Región Insular	273%
Internado Judicial de Yaracuy	344%
Centro Penitenciario de Aragua	918%
<b>Total average</b>	<b>367.14%</b>

To make things worse, the number of prison workers and law enforcement personnel assigned to the different penitentiaries has dropped dramatically.<sup>19</sup> Several prisons were also closed down, supposedly to give way to the construction of new modern facilities, but in reality, only three centers have been built out of the twenty-four promised by the Minister of the Popular Power for Penitentiary Matters in 2012.<sup>20</sup>

In most—if not all—of the existing prisons, there is hardly any maintenance, cleaning, or repairs done.<sup>21</sup> Inmates have no access to doctors, nurses, or medical supplies; the drinking water and food are scarce; and there are frequent allegations of police abuse and physical humiliation to both the inmates and their relatives during visitations.<sup>22</sup> Unsurprisingly, the inmates have reacted with frequent protests, hunger strikes, and numerous bouts of violence that have often ended in deadly confrontations with police forces.<sup>23</sup> As a result, the Venezuelan prison has become much more than a place for temporary confinement and social rehabilitation. Despite the fact that Venezuela abolished capital punishment in 1863, more often than not, incarceration is a death sentence unto itself.<sup>24</sup> As shown in Table Two

19. *Id.*

20. Thabata Molina, *Venezuela Necesita 25 Cárceles Para Descongestionar el Sistema Penitenciario*, NACIONAL (Oct. 28, 2012, 3:28 PM), [http://www.el-nacional.com/noticias/sucesos/venezuela-necesita-carceles-para-descongestionar-sistema-penitenciario\\_170899](http://www.el-nacional.com/noticias/sucesos/venezuela-necesita-carceles-para-descongestionar-sistema-penitenciario_170899) [<https://perma.cc/8XSL-HRL4>].

21. S.G., *Este Año Hubo 30% Más Víctimas en las Cárceles*, NACIONAL (Dec. 15, 2017, 1:15 AM), [http://www.el-nacional.com/noticias/sucesos/este-ano-hubo-mas-victimas-las-carceles\\_215526](http://www.el-nacional.com/noticias/sucesos/este-ano-hubo-mas-victimas-las-carceles_215526) [<https://perma.cc/U9F2-CZML>].

22. Jorge Benezra, *On the Inside: Venezuela's Most Dangerous Prison*, TIME (June 6, 2013), <http://time.com/3800088/on-the-inside-venezuelas-most-dangerous-prison/> [<https://web.archive.org/web/20150422050649/http://time.com/3800088/on-the-inside-venezuelas-most-dangerous-prison/>].

23. See Grillo, *supra* note 1; see also OVP 2015 REPORT, *supra* note 5, at 14.

24. Antonio María Delgado, *El Horror de las Cárceles en Venezuela*, NUEVO HERALD (Sep. 16, 2012, 5:00 AM) <http://www.elnuevoherald.com/noticias/article2017775.html> [<https://web.archive.org/web/20170419024744/http://www.elnuevoherald.com/noticias/article2017775.html>].

below, between 1999 and 2015, a total of 6,581 inmates lost their lives, and 16,417 were injured in prison-related violence.<sup>25</sup>

Table 2  
Deaths and injuries in Venezuelan Prisons (1999-2015)

Year	Injured	Deaths	Total
1999	1,695	390	2,085
2000	1,255	338	1,593
2001	1,285	300	1,585
2002	1,249	244	1,493
2003	903	250	1,153
2004	1,428	402	1,830
2005	727	408	1,135
2006	982	412	1,394
2007	1,023	498	1,521
2008	854	422	1,276
2009	635	366	1,001
2010	967	476	1,443
2011	1,457	560	2,017
2012	1,132	591	1,723
2013	616	506	1,122
2014	179	309	488
2015 (1 <sup>st</sup> semester)	30	109	139
<b>Total</b>	<b>16,417</b>	<b>6,581</b>	<b>22,998</b>

The dramatic state of Venezuelan prisons has garnered the attention of local and foreign NGOs, regional and international human rights organizations, and activists calling for swift government action.<sup>26</sup> In several occasions, Venezuelan public officials have vowed to allocate more resources to tackle the crisis, and in 2011, then-President Hugo Chavez even created a special Ministry for Penitentiary Services.<sup>27</sup> Nevertheless, as described earlier, the result has been woefully inadequate. The general perception is that neither security guards nor government

25. OVP 2015 REPORT, *supra* note 5, at 17.

26. See, e.g., Amnistía Internacional, *Descubrimiento de Fosa Común en un Centro Penitenciario Ilustra la Grave Crisis Carcelaria en Venezuela*, PROVEA (Mar. 15, 2017), <http://www.derechos.org.ve/actualidad/amnistia-internacional-descubrimiento-de-fosa-comun-en-un-centro-penitenciario-ilustra-la-grave-crisis-carcelaria-en-venezuela> [https://perma.cc/NBS4-DCW2]; *Audiencias CIDH: Libertad de Expresión, Derecho a la Vivienda, Situación de DDHH en las Cárceles y Arco Minero*, PROVEA (Dec. 5, 2016), <http://www.derechos.org.ve/actualidad/audiencias-cidh-libertad-de-expresion-derecho-a-la-vivienda-situacion-de-ddhh-en-las-carceles-y-arco-minero> [https://perma.cc/VMY3-HUT5].

27. Decree 8,266 (July 26, 2011) (Venez.).

employees keep order in the prisons and that the only effective form of social control depends on the inmates themselves.<sup>28</sup>

The foreign press, including *The New York Times*,<sup>29</sup> the *Guardian*,<sup>30</sup> and PBS,<sup>31</sup> has published stories describing outlandish scenes of debauchery and excess in some prisons, where inmates host frequent drug and sex fueled parties with prostitutes, rap singers, and other “special visitors” who are smuggled in along with weapons, high-end electronics, and other items from the outside world.<sup>32</sup> In some institutions, like the San Antonio penitentiary in Margarita Island, there are outdoor pools, dance floors, cockfighting rings, and other recreational areas built by the prisoners themselves or by hired crews brought from the outside.<sup>33</sup> The internal illegal drug market has also reportedly flourished to the point that some people allegedly visit the prison to just buy drugs.<sup>34</sup> This is possible in great part due to the fact that prison guards only search those entering the premises and not those who leave.<sup>35</sup>

The almost total absence of government oversight and the institutional disarray has not only allowed these and other extravagances,<sup>36</sup> but it has also enabled certain groups of inmates to expand the reach of their criminal networks and to establish powerful internal hierarchies that rely on the pervasive use of violence as a mechanism of social control.<sup>37</sup> The beliefs, values, practices, and norms that prevail among the prisoners, which differ from those of mainstream society, allow

28. See Segundo Mendoza, *Los Pranes Mandan en Cárceles y el Gobierno Negocia con Ellos*, TIEMPO (June 12, 2012), [http://www.diarioeltiempo.com.ve/V3\\_Secciones/index.php?id=124172012](http://www.diarioeltiempo.com.ve/V3_Secciones/index.php?id=124172012).

29. Simon Romero, *Where Prisoners Can Do Anything, Except Leave*, N.Y. TIMES (June 3, 2011), <http://www.nytimes.com/2011/06/04/world/americas/04venez.html> [<https://web.archive.org/web/20180131102215/http://www.nytimes.com/2011/06/04/world/americas/04venez.html>].

30. Virginia López, *Gangster's Paradise: Prisoners Make Mockery of Venezuela's Jails*, GUARDIAN (Feb. 5, 2013, 4:00 PM), <https://www.theguardian.com/world/2013/feb/05/prisoners-make-mockery-venezuela-jails> [<https://perma.cc/MXT9-9A4H>].

31. Steve Inskeep, *Inmates in a Venezuelan Prison Build a World of Their Own*, NPR (June 11, 2013, 3:21 AM), <http://www.npr.org/sections/parallels/2013/06/11/190392074/inmates-in-a-venezuelan-prison-build-a-world-of-their-own> [<https://web.archive.org/web/20150922135751/http://www.npr.org/sections/parallels/2013/06/11/190392074/inmates-in-a-venezuelan-prison-build-a-world-of-their-own>].

32. See Romero, *supra* note 29.

33. See Alfredo Meza, *Una Cárcel con Discoteca, Ahora en Venezuela*, PAÍS (Feb. 15, 2016, 8:49 PM), [https://elpais.com/internacional/2016/02/15/america/1455576486\\_264845.html](https://elpais.com/internacional/2016/02/15/america/1455576486_264845.html) [[https://web.archive.org/web/20180413163609/https://elpais.com/internacional/2016/02/15/america/1455576486\\_264845.html](https://web.archive.org/web/20180413163609/https://elpais.com/internacional/2016/02/15/america/1455576486_264845.html)]; see also Romero, *supra* note 29.

34. See Romero, *supra* note 29.

35. *Id.*

36. *Id.*

37. See *El Pran: ¿Símbolo o Significado?*, OBSERVATORIO VENEZOLANO VIOLENCIA (Nov. 15, 2016), <http://observatoriodeviolencia.org.ve/el-pran-simbolo-o-significado> [<https://perma.cc/K6XE-QRVA>].



us to speak of a “prison subculture.”<sup>38</sup> This subculture, which is often described pejoratively, contains at least three key distinctive characteristics.

First, the members of the Venezuelan prison subculture have an internal social and political hierarchy with well-defined roles and a clear power structure.<sup>39</sup> Second, violence or the threat of violence are ubiquitous in the prison subculture and are used widely as a means to attain and preserve political power and as a tool for maintaining the internal social control.<sup>40</sup> Despite its prevalence, intra-prison violence is generally monopolized by group leaders and subject to a strict normative standard that may or may not clash with the values and principles of the formal legal system and mainstream society.<sup>41</sup> Third, the Venezuelan prison subculture depends on a particular set of internally-created norms that govern all aspects of individual and group interactions. Strict observance to these norms is carefully overseen by group leaders, with cooperation from the inmate community at large.<sup>42</sup> This set of “indigenous”<sup>43</sup> norms are what Crespo & Bolaños have referred to as the Code of the Inmate (“El Código del Preso”), which is not only limited to govern inmate-to-inmate relations,<sup>44</sup> but also deals with social behavior involving inmate-to-warden, inmate-to-visitors/outside, and inmate-to-institutions (i.e., the prison, or the formal legal system as a whole).<sup>45</sup>

Not all aspects of the Venezuelan prison subculture are negative. In order to make up for the lack of an adequate government infrastructure, inmates have pooled resources to offer certain services such as infirmaries, kitchens, and internal security, which under normal circumstances would be fulfilled by prison wardens and other official employees. Depending on the prison, the purchasing power of the inmate population, and the possibility of exerting influence over corrupt wardens or even high ranking government officials, some prison gang leaders have managed to bring a glimpse of outside life comfort to their fellow inmates.<sup>46</sup> Some of these luxuries are makeshift barbershops, cybercafés, call centers, and even stalls that sell cigarettes and drinks. Multiple services and facilities are found throughout different areas as if the entire prison were a regular town.<sup>47</sup>

The provision of goods and services, the maintenance of social order, and the overall functioning of prison life would not be possible without the social

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38. Freddy Crespo, *Cárceles: Subcultura y Violencia Entre Internos*, 28 REVISTA CENIPEC 123, 129 (2009); see also Freddy A. Crespo & Mireya Bolaños, *Código del Preso: Acerca de los Efectos de la Subcultura del Prisionero*, 37 CAPÍTULO CRIMINOLÓGICO 53 (2009).

39. Crespo, *supra* note 38, at 131.

40. *Id.* at 132.

41. *Id.* at 131–32.

42. *Id.*

43. The term “indigenous” is used in this context to convey a set of norms generated within a particular community outside of the formal legal system.

44. See Crespo & Bolaños, *supra* note 38, at 61.

45. *Id.*

46. See Romero, *supra* note 29.

47. *Id.*

organization achieved by the prisoners through self-regulation and indigenous governance. Despite the fact that the prison owes its existence to the criminal justice system and every aspect related to the incarceration is supposedly governed by the official laws, the reality of Venezuelan prisons shows otherwise. The lack of adequate government infrastructure and the absence of a coherent policy in Venezuela's prisons has left a vacuum, which the inmates themselves seem to have fulfilled. As this Article reveals, the Code of the Inmate has taken over almost all aspects in the life of the incarcerated, from the most personal or intimate facets to the most general social interactions, thus taking over the role that under normal circumstances would be performed by official institutions. The Code of the Inmate appears to have filled every imaginable crevasse in the life of those that inhabit the prisons whether they voluntarily accept it or not; from the most mundane aspects of life such as what clothes to dress, to what words to speak, and what religion to profess.<sup>48</sup> This indigenous system of norms has created and given effect to different "rights" such as the right to food, to shelter, and to gain access to some benefits. This normative system has also fashioned litigation-like processes that members of the community use to channel their petitions, claims and grievances.

Interestingly, the physical barrier that exists between the inmate and the outside world, which results from the act of incarceration, is also what has incentivized the emergence of a private indigenous order within the prison walls. This private order supersedes the official legal system as a main source of normative guidance; thus, creating a situation in which the absolute divorce between the law in the official books and the unofficial law in action could not be clearer.

This Article focuses on the latter aspect. It explores the development and use of the intra-group norms that comprise the Code of the Inmate and their emergence and functioning outside, beyond, and even against the state. The discussion presented here contributes to the understanding of the intricate landscape of legal pluralism insofar as it captures a distinctive set of rule-making and rule-applying institutions, actors, and processes that are not part of the structure of the state but perform a state-like role.<sup>49</sup> The normative system created by the inmates finds its source not in the state or in the official legal system but inside the community that it seeks to govern. As I explain later, of the many examples of plural normative orders, what stands out in the case of the Venezuelan prison community is the apparent contradiction between the extreme violent nature of its members and their desire to attain order, hierarchy, and social control.

In the sections that follow, I discuss the development and use of the intra-group indigenous norms fittingly labeled as Code of the Inmate. I also discuss the institutions and processes devised among Venezuelan inmates to enforce their group norms and adjudicate the disputes that arise from their everyday interactions.

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48. Crespo & Bolaños, *supra* note 38, at 62.

49. Cf. Marc Galanter & Manuel A. Gómez, *Waiting for Mendeleev: The Tangle of Indigenous Law*, 10 FLA. INT'L U.L. REV. 1, 1-2 (2014) (discussing the landscape of legal pluralism).

This article hopes to contribute to the literature on private governance vis-à-vis state regulation and the factors that foster law-abiding behavior among those who are routinely seen at odds with the official legal system.

### I. SOCIAL ORDER WITHOUT AND AGAINST THE STATE

The literature on indigenous order and unofficial regulation showcases myriad examples depicting situations of rule-making and rule-applying institutions that are not part of the state.<sup>50</sup> Some of these normative orders appear to conform to the official legal system or supplement it. Others simply coexist and run parallel to state institutions, sometimes crossing paths with the official legal system along the way.<sup>51</sup> At the other end of the spectrum, there are some social realities in which existence and operation is precisely owed to a rejection or contradiction of the official legal system and which thrive in absence of any contact with the state.<sup>52</sup> The landscape is complex, and the variances and combinations among actors, institutions, and processes seem endless.

The case studies are as diverse and colorful as our modern interconnected society: Hasidic<sup>53</sup> and Jain diamond dealers,<sup>54</sup> cotton merchants,<sup>55</sup> Brazilian beachgoers,<sup>56</sup> cattle ranchers,<sup>57</sup> sumo wrestlers,<sup>58</sup> roller skaters,<sup>59</sup> stand-up

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50. *Id.*

51. *Id.*

52. *Id.*

53. Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 11 J. LEGAL ST. 115 (1992); Barak D. Richman, *Ethnic Networks, Extralegal Certainty, and Globalisation: Peering into the Diamond Industry*, in LEGAL CERTAINTY BEYOND THE STATE: EMPIRICAL STUDIES AND THEORIES OF CHANGE (Volkmar Gessner ed., 2013).

54. Manuel A. Gómez, *Precious Resolution: The Use of Intra-Community Arbitration by Jain Diamond Merchants*, 2 BELGIAN REV. ARB. [B-ARBITRA] (2013).

55. Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms, and Institutions*, 99 MICH. L. REV. 1724 (2001).

56. Pedro R. Fortes, *How Socio-Legal Norms Emerge Within Complex Networks: Law and (In)Formality at Ipanema Beach*, 10 FLA. INT'L U.L. REV. 183 (2014).

57. William A. Fischel, *Order Without Law: How Neighbors Settle Disputes* by Robert C. Ellickson, 69 LAND ECON. 113 (1993) (book review).

58. Mark D. West, *Legal Rules and Social Norms in Japan's Secret World of Sumo*, 26 J. LEGAL STUD. 165 (1997).

59. David Fagundes, *Talk Derby to Me: Intellectual Property Norms Governing Roller Derby Pseudonyms*, 90 TEX. L. REV. 1093 (2012).

comedians,<sup>60</sup> French chefs,<sup>61</sup> drag queens,<sup>62</sup> festival attendees,<sup>63</sup> motorcycle riders,<sup>64</sup> slum dwellers,<sup>65</sup> and obviously the incarcerated.<sup>66</sup> To reveal that this phenomenon is not new, we can also look at historical examples involving medieval traders throughout Europe,<sup>67</sup> Dutch merchants in 17<sup>th</sup> century Amsterdam, pre-colonial African traders,<sup>68</sup> inmates in the Andersonville prison during the American Civil War,<sup>69</sup> and the camps organized by American miners across the western territories of the United States during the gold rush of the mid-1800s.<sup>70</sup>

Despite their striking differences, these examples have at least two things in common. First, the presence of a close-knit community whose members are connected with each other based on certain ties (e.g., social, economic, ethnic, religious, etc.) that are generally developed over time and strengthened by a common set of values or aspirations (e.g., economic gain, social harmony, spiritual fulfillment, etc.). Second, relations between group members are governed by internally created norms, rules, or customs, which participants follow instead of the official legal system.

The reason why group members cooperate or display law-abiding behavior in each of these indigenous contexts also varies alongside a spectrum. Some people are believed to follow community rules because of the presence of an authority or someone in a position of power vis-à-vis the rest of the group.<sup>71</sup> The source of said authority, its perceived legitimacy, and the means through which it is able to

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60. Dotan Oliar & Christopher Jon Sprigman, *There's No Free Laugh (Anymore): The Emergence of Intellectual Property Norms and the Transformation of Stand-Up Comedy*, 94 VA. L. REV. 1787 (2008).

61. See generally Emmanuelle Fauchart & Eric von Hippel, *Norms-Based Intellectual Property Systems: The Case of French Chefs*, 19 ORG. SCI. 187 (2006).

62. Eden Sarid, *Don't Be a Drag, Just Be a Queen—How Drag Queens Protect Their Intellectual Property Without Law*, 10 FLA. INT'L U.L. REV. 133 (2014).

63. Manuel A. Gómez, *Order in the Desert: Law Abiding Behavior at Burning Man*, 2013 J. DISP. RES. 349.

64. Mitch Librett, *Wild Pigs and Outlaws: The Kindred Worlds of Policing and Outlaw Bikers*, 4 CRIME, MEDIA, CULTURE 257 (2008); John W. Schouten & James H. McAlexander, *Subcultures of Consumption: An Ethnography of the New Bikers*, 22 J. CONSUMER RES. 43 (1995).

65. Manuel A. Gómez, *The Tower of David: Social Order in the Vertical Slum*, 10 FLA. INT'L U.L. REV. 215 (2014).

66. David B. Skarbek & Andrew Marcum, *Polycentrism and Prison Gangs*, in 4 THE ANNUAL PROCEEDINGS OF THE WEALTH AND WELL-BEING OF NATIONS 115, 118 (Emily Chamlee-Wright ed., 2012); see generally David B. Skarbek, *Governance and Prison Gangs*, 105 AM. POL. SCI. REV. 702 (2011) [hereinafter, Skarbek, *Prison Gangs*].

67. Paul Milgrom, Douglass North & Barry Weingast, *The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs*, 2 ECON. & POL. 1 (1990).

68. Peter Leeson, *Social Distance and Self-Enforcing Exchange*, 37 J. LEGAL STUD. 161 (2008).

69. See generally WILLIAM MARVEL, *ANDERSONVILLE: THE LAST DEPOT* (Gary W. Gallagher ed., 1994).

70. CHARLES HOWARD SHINN, *MINING CAMPS: A STUDY IN AMERICAN FRONTIER GOVERNMENT* (1884).

71. See generally STANLEY MILGRAM, *OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW* (1974).

persuade or compel others to obey, is also the subject of discussion.<sup>72</sup> In other instances, where the presence of an authority is not clear or simply not relevant, cooperation may result from self-interest, an internal moral code, fear to the supernatural, or a combination of different factors.<sup>73</sup>

The scholarly literature has also shown an interest in the social control mechanisms that step in when group members fail to cooperate with pre-established norms or disobey an express authoritative decision.<sup>74</sup> The dispute processing mechanisms and fora range from court-like adjudication procedures, arbitration, conciliation, and mediation to self-help and avoidance.<sup>75</sup> The realm of punishment and its nature is also broad. It includes economic, physical, and reputation-based sanctions where the possibility of losing face may be more important than confronting physical punishment or paying a fine.

As I just mentioned, for a successful indigenous order to thrive, the values and norms of the relevant group or community do not need to be necessarily aligned with the principles of mainstream society or be endorsed by the official legal system.<sup>76</sup> Moreover, there are instances in which the mere existence of the group is at odds with the formal legal codes or with societal values. As a result, their members are frequently forced to thread carefully between two systems: the official and the unofficial. Such is the case of illicit organizations like the mafia<sup>77</sup> and prison gangs.<sup>78</sup> As I now turn to explain, the prison subculture is reflective of the realm of unofficial regulation in a very interesting way.

Given their illegal nature, the underworld communities cannot rely on the official law to regulate the relations among their members. For example, the enforcement of a contract for the sale of illegal drugs or smuggled goods cannot depend on the application of contract law provisions,<sup>79</sup> and those who have sustained losses as a result of non-compliance cannot seek the protection of official courts. Their best alternative is to turn to the social control mechanisms that operate within these communities. One of the main characteristics of these illicit indigenous forms of social control is that they do away with some of the safeguards afforded to ordinary citizens such as due process, equal treatment under the law, and the proscription of the use of violence or self-help to resolve disputes. Interestingly, it is precisely the lack of these mainstream features and the glorification of certain anti-social values, what help define underground communities.

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72. Thomas Blass, *The Milgram Paradigm After 35 Years: Some Things We Know About Obedience to Authority*, 29 J. SOC. PSYCHOL. 955-78 (1999).

73. See generally TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006).

74. See generally TOM R. TYLER, *WHY PEOPLE COOPERATE: THE ROLE OF SOCIAL MOTIVATIONS* (2013).

75. See generally Gómez, *supra* note 63.

76. *Id.*

77. FEDERICO VARESE, *MAFIAS ON THE MOVE: HOW ORGANIZED CRIMES CONQUERS NEW TERRITORY* (2011).

78. See generally Skarbek, *Prison Gangs*, *supra* note 66.

79. *Id.* at 702.

It is also because of these traits that illicit or underground communities are usually viewed as inferior, negative, or incomplete orders, which emerge and remain below the surface precisely because other forms of regulation are not possible.<sup>80</sup> Most of the attention given to illicit communities is on the potential harm that they may pose to society or their contribution toward creating chaos.<sup>81</sup> In the case of the Venezuelan prison subculture described in this paper, its media portrayal pays more attention to the insubordination of inmates against societal values and the dangers that they pose to society than on any other features that they might have.

Notwithstanding this portrayal, and contrary to the generalized belief, criminal groups and other illicit organizations may actually contribute to reducing anarchy and creating certainty among their members. In some cases, these groups may even provide a system of governance that protects property rights and assist with the enforcement of contracts when the state fails or is unable to do so. Inmates are interested in regulating their social dynamics not because they want to resist or challenge the official legal system, but because they need to regulate their own life behind bars and create certainty.

One has to be careful not to idealize or glorify the perceived efficiencies of illicit or underground social organizations. Their main value is to their members and not to society at large. However, exploring the nuances and the social dynamics that take place in these otherwise unexplored and shunned spaces sheds light on the factors that promote cooperation and the role of legitimacy and other elements in the context of indigenous regulation. I now turn to describe this microcosm.

## II. A WORLD OF THEIR OWN: PRIVATE GOVERNANCE INSIDE A VENEZUELAN LOW-SECURITY PRISON<sup>82</sup>

In a recent ethnographic study of a Venezuelan low security prison (*penal abierto*), Andrés Antillano described in great detail the social environment there, including norms and institutions created and followed by the inmates with almost absolute independence from the state.<sup>83</sup> His research debunked and demystified in part the general perception that because of the inability of the official government

80. EFRAT SHOHAM, PRISON TATTOOS: A STUDY OF RUSSIAN INMATES IN ISRAEL 5 (2015).

81. Juan José Martínez D'Aubuisson & Steven Dudley, *Where Chaos Reigns: Inside the San Pedro Sula Prison*, INSIGHT CRIME (Feb. 2, 2017), <https://www.insightcrime.org/investigations/where-chaos-reigns-inside-the-san-pedro-sula-prison/> [<https://perma.cc/35RP-3GBD>].

82. This Section is largely based on a series of interviews with Andrés Antillano, Chair of the Department of Criminology at the Universidad Central de Venezuela, and one of the foremost authorities in the study of inmate communities in Venezuela. Antillano and his research team have been able to explore firsthand the realities of Venezuelan low security prisons through direct access to incarcerated individuals and their social networks.

83. Andrés Antillano, *Cuando los Presos Mandan: Control Informal Dentro de la Cárcel Venezolana*, 24 ESPACIO ABIERTO CUADERNO VENEZOLANO SOCIOLOGÍA [ESPACIO ABIERTO] 16, 39 (2015).

to administer penal institutions adequately, inmates live in a constant state of chaos, devoid of any rules and rational behavior.<sup>84</sup>

The reality that Antillano described did not pretend to defy the media stories—like the ones mentioned in the introduction—depicting groups of Venezuelan inmates indulging in vices and bacchanalian activities but explained a social environment that coexists with it.<sup>85</sup> Antillano's main contribution was to uncover a little known facet in the life of incarcerated individuals in Venezuela, which is their remarkable level of social organization, sophisticated systems of rules, and indigenous institutions that help them attain and preserve social order in an otherwise anarchic situation.<sup>86</sup> Other scholarly works by Crespo and Bolaños, and Añez Castillo have delved into exploring—mainly through ethnographic research—other facets of Venezuela's prison subculture, from a description of the so called Code of the Inmate, to the operation of prison gangs, and to the use of the Internet and social networks as a means of expression about life behind bars.<sup>87</sup>

The academic literature recognizes the existence of a distinctive Venezuelan prison subculture featuring the three elements mentioned earlier: a unique hierarchical structure, the pervasive use of violence, and the existence of an indigenous system of norms that governs the interaction among inmates and others.<sup>88</sup> Other comparative examples, resulting from research conducted in South American countries such as Brazil<sup>89</sup> and Bolivia,<sup>90</sup> have observed a similar trend.

As mentioned earlier, the internal social and political structures created by the inmates in the Venezuelan context have thrived in part because of the failure of state institutions and the collapse of the criminal justice system. The indigenous order has, in a way, become a replacement for an official apparatus that is simply not there. It is important to note, however, that such an informal system of governance does much more than being a placeholder, for it also contributes to the creation and maintenance of a value and cultural system that serves the interests of the members of that community. The Venezuelan inmate community that comprises the focus of the academic literature—and also this Article—is the one that exists in a low security prison. The physical structure of Venezuelan low-security prisons coupled with the fact that they are generally overcrowded and neglected by government officials, has allowed the inmates to occupy every

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84. *Id.*

85. *Id.*

86. *Id.*

87. María Alejandra Añez Castillo, *El Uso del Internet y las Redes Sociales como Medio de Expresión de la Situación Carcelaria en Venezuela*, 13 REVISTA ENCUENTROS 85 (2014); Crespo & Bolaños, *supra* note 38, at 53.

88. *Id.*

89. *See generally* KARINA BIONDI, *SHARING THIS WALK: AN ETHNOGRAPHY OF PRISON LIFE AND THE PCC IN BRAZIL* (John F. Collins ed., 2016).

90. *See generally* FRANCESCA CERBINI, *LA CASA DE JABÓN: ETNOGRAFÍA DE UNA CÁRCEL BOLIVIANA* (2012).

available space and take advantage of the social fabric to promote a self-regulated community devoid of any external social control.

Maximum-security prisons, on the other hand, feature a strong presence of wardens, law enforcement, and other personnel in charge of executing the official rules; therefore, there is less room for the inmates to communicate and relate to each other.<sup>91</sup> In maximum-security prisons, most inmates are also subject to constant physical isolation during the majority of the time, thus preventing them from becoming socially integrated into any community.<sup>92</sup> These circumstances effectively hinder the emergence of any alternative social organization of inmates different from the hyper-structured arrangements created by the official system. I am by no means suggesting that maximum-security prisons are devoid of all types of community organization. I am simply suggesting that the chances of an organization established by maximum-security inmates is much less frequent than in low security prisons.

#### *A. Looking Into the Social Fabric of the Venezuelan Prison*

In addition to the three elements mentioned earlier (political and social hierarchy, pervasive use of violence, and internal normative system) that help describe the subculture of the low security prison in Venezuela, the social fabric created by the inmates is strengthened by certain symbolisms, values, and expected behavior such as the vocabulary, speech and other forms of communication among inmates; their dress code, manners, and social behavior; and their understanding of “property” and other rights while in confinement. I will discuss each in the following paragraphs.

One of the most important, albeit subtle, forms of social regulation in the inmate community is the meticulous regulation of vocabulary and speech.<sup>93</sup> Contrary to the general perception about the prison as a hostile environment prone to verbal bullying or abuse, the use of innuendos and double entendres—sexual or otherwise—tend to be generally forbidden in Venezuelan prison subculture.<sup>94</sup> Those who dare to cross the invisible speech line are severely reprimanded.<sup>95</sup> Community members even go to great lengths to come up with “safe” words that leave little doubt about the seriousness or intended meaning of the speaker.<sup>96</sup> Even common words such as egg, yucca, or milk are forbidden because of their alternative

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91. See generally SHARON SHALEV, *SUPERMAX: CONTROLLING RISK THROUGH SOLITARY CONFINEMENT* (2009).

92. Daniel P. Mears & William D. Bales, *Supermax Incarceration and Recidivism*, 47 *CRIMINOLOGY* 1131, 1166 (2009).

93. Telephone Interview with Andrés Antillano, Chair of the Dep’t of Criminology, Universidad Central de Venez. (Nov. 30, 2016).

94. *Id.*

95. *Id.*

96. See generally Yraima Camila Mogollón Martínez & Delci Torres, *Palabras en Prisión: La Jerga como Expresión del Mundo Carcelario en Urbana Estado Lara*, 34 *PARADIGMA* 73, 91 (2013).



vulgar meaning as male genitalia and semen.<sup>97</sup> Instead of *leche* (milk) for example, inmates use *vaquita* (little cow); *huevos* (eggs) are called *yenci*; and the word for *yuca* (yucca) is just *raíz* (root).<sup>98</sup>

Along the same lines, counting in “the hundreds” (*los cientos*) is also modified because of the phonetic similarity with the phrase, “I feel” (*yo siento*).<sup>99</sup> As a result, the only acceptable way to say *ciento uno* (one hundred and one), for example, would be *cien más uno* or *ciento y uno* (one hundred plus one) to avoid giving the impression that one “feels” something.<sup>100</sup> Inmates are also forbidden from using any words or expression that resemble police or government jargon.<sup>101</sup> In many cases, the inmates invent their own words, thus creating an original slang often unintelligible to outsiders.<sup>102</sup> The moral code established among inmates regarding speech is very strict and does not leave any room for relaxation.<sup>103</sup> The rationale behind such an unyielding rule is the perceived need to eliminate or minimize any possible source of tension that sexual or other innuendos may create in an already charged and volatile environment. A violation to any implicit or explicit speech rule may carry severe punishment, which inmates call a *chinazo* (i.e., a hit from a stone thrown by a slingshot).<sup>104</sup>

Physical appearance is another space subject to indigenous social regulation in the Venezuelan prison subculture. There is no legal requirement that mandates inmates to wear uniforms.<sup>105</sup> Moreover, the precarious condition of the country and the general neglect of the prisons as described earlier make it nearly impossible for most inmates to be fully clothed or to even own bedding and other essentials.<sup>106</sup> Notwithstanding, there are certain codes of conduct related to clothing and accessories that are strongly enforced.<sup>107</sup> For example, inmates are not supposed to wear dark sunglasses in the presence of any female relative visiting other prisoners, nor are they allowed to show their naked torso or stare directly at someone else’s spouse, girlfriend, or mother.<sup>108</sup>

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97. Egg (*huevo*) and yucca (*yuca*) are Spanish vulgarisms for testicles or penis. Similarly, milk (*leche*) is often used for semen.

98. María I. Iglesias, *Jerga Penitenciaria*, UNIVERSAL (July 10, 2011), <http://archivo.eluniversal.com/2011/07/10/jerga-penitenciaria> [<https://perma.cc/JD6C-USSP>]; Añez Castillo, *supra* note 87 at 95.

99. See generally Antillano, *supra* note 83.

100. *Id.*

101. *Id.*

102. For a discussion about the development of slang in U.S. prisons, see WILLIAM K. BENTLEY & JAMES M. CORBETT, *PRISON SLANG: WORDS AND EXPRESSIONS DEPICTING LIFE BEHIND BARS* (1992), and Bert Little, *Prison Lingo: A Style of American English Slang*, 24 ANTHROPOLOGICAL LINGUISTICS 206 (1982).

103. Interview with Andrés Antillano, *supra* note 93.

104. *Id.*

105. *Id.*

106. Grillo, *supra* note 1.

107. Interview with Andrés Antillano, *supra* note 93.

108. *Id.*

The Venezuelan code of the inmate also prescribes the avoidance of any unnecessary physical contact with others.<sup>109</sup> Even the slightest accidental touch may be construed as an improper advance or unacceptable act of humiliation by cellmates.<sup>110</sup> The use of one's individual body is also subject to the careful scrutiny of the community.<sup>111</sup> To that end, sentinels are posted in the bathrooms to ensure that no one crosses the line between right and wrong.<sup>112</sup> An inmate who shaves his own legs may be shot by a sentinel for engaging in a type of conduct that runs against the macho culture of the prison; a similar fate would befall anyone caught masturbating or engaged in any other sexual act.<sup>113</sup> In sum, any conduct, act, or speech that may appear ambiguous, suspicious, or that is perceived to potentially disturb the fragile order of the prison will be undoubtedly suppressed.<sup>114</sup> Not only are those actively engaged in a forbidden conduct subject to punishment, but equally are those who are thought to provoke or invite such behavior.<sup>115</sup>

The concept of property and other rights that mainstream society holds in high regard acquires a different tone in the Venezuelan prison subculture. On the one hand, the scarcity of space and the lack of physical barriers make it difficult for most inmates to claim exclusivity over a certain area or to safely store their possessions even within the confines of their own cells, in the rare cases when cells exist.<sup>116</sup> Most "private" spaces are marked with makeshift curtains and similar dividers, which are also rare given the overcrowded environment of the prison.<sup>117</sup> On the other hand, the right to own certain things such as weapons is severely restricted and their use heavily regulated. Only those expressly authorized by *El Pran* (the Principal) may own or use weapons.<sup>118</sup> In all instances, the acquisition, transfer, and custody of any guns or weapons are also the sole responsibility of an individual called *El Parquero* (the valet parking guy).<sup>119</sup>

Money is another commodity in which ownership and use is restricted, and prepaid mobile phone cards have become the main currency among the incarcerated. As we will explain later, the ability to communicate with the outside and to preserve one's social network is one of the most important assets for the members of the Venezuelan prison subculture. In any case, the use of non-monetary objects as currency is not unique to Venezuelan prisons, and a similar phenomenon

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109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

has been reported among inmates in United States' prisons regarding the use of ramen noodles and cigarettes instead of cash.<sup>120</sup>

The scarcity of many essential means and the inadequacy of the facilities also forces inmates to pool resources and share everyday provisions at a higher rate than what people would do under ordinary circumstances.<sup>121</sup> In this context, theft is severely punished, sometimes by expulsion from the community—described as *ser anegado* (“being drowned”)—or even death.<sup>122</sup> I will return to this issue in the next section when addressing the adjudication of disputes.

### B. The Pran and his Car

Some aspects of the Venezuelan prison subculture evoke life in medieval times. The same way in which the King and his Court were the center of political, economic, and social power in medieval era of Europe, the Pran and his Car are the centerpieces of the Venezuelan prison.<sup>123</sup> The Pran or Principal is the head of the Car and also the leader of the community.<sup>124</sup> The term Pran, which appears to have been originated in Puerto Rican prisons during the nineties, does not have any known meaning in the Spanish language, although some allege that it is an acronym of *Preso-Rematado-Asesino-Nato* (Prisoner-Overkilled-Born-Assassin).<sup>125</sup> Others consider that Pran is simply a contraction of the term “Principal,” which is how these rulers are called in the community.<sup>126</sup> Pranes are neither democratically elected nor appointed by the Car or any other organ; they govern as absolute monarchs with an iron fist but also a velvet glove for they are also concerned with maintaining the appearance of a good government.<sup>127</sup> Pranes usually ascend to power through violent means against a previous Pran whose legitimacy has been questioned or when a previous Pran has died, gained freedom, or has been transferred out to another facility.<sup>128</sup> Likewise, a Pran will cease in his role when deposed, killed, or removed by any other means.<sup>129</sup> The transitional period between Pranes is generally

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120. See Maria Godoy, *Ramen Noodles Are Now the Prison Currency of Choice*, NPR (Aug. 26, 2016), <https://www.npr.org/sections/thesalt/2016/08/26/491236253/ramen-noodles-are-now-the-prison-currency-of-choice> [<https://perma.cc/UH6Z-MCQG>].

121. Interview with Andrés Antillano, *supra* note 93.

122. *Id.*

123. *Id.*

124. See generally EN EL NOMBRE DEL PRAN: SEMBLANZA DE WILMER “WILMITO” BRIZUELA (2017) [hereinafter EN EL NOMBRE DEL PRAN].

125. Francisco P. Alviárez, *Conozca de Donde Vienen los “Pranes”*, DIARIO CARACAS (Sept. 20, 2013), <http://diariodecaracas.com/que-sucede/conozca-donde-vienen-los-pranes> [<https://perma.cc/7EFC-SNE3>]; see also PATRICIA CLAREMBAUX, A ESE INFIERNO NO VUELVO: UN VIAJE A LAS ENTRANAS DE LAS CÁRCELES VENEZOLANAS (2016).

126. EN EL NOMBRE DEL PRAN, *supra* note 124.

127. Interview with Andrés Antillano, *supra* note 93.

128. EN EL NOMBRE DEL PRAN, *supra* note 124.

129. Interview with Andrés Antillano, *supra* note 93.

extremely violent and unstable for the community, the same way that it often happened during times of the monarchy.<sup>130</sup>

As a result of the hierarchical structure of the prison subculture the Pran and the members of his entourage/government are often exempted from the obligations demanded from the rest of the inmates or *la población* (populous).<sup>131</sup> Curiously, the Principal and his *Carro* (Car) are tasked with enforcing social behavior and ensuring that the población complies with the The Code of the Inmate, but at the same time they behave as if they are above the law.<sup>132</sup> For example, the Principal may enjoy expensive electronics, decorative objects, specially prepared food, frequent visitors, and other perks that are beyond the reach of the general population.<sup>133</sup>

The Pran rarely has any direct interaction with the rest of the inmates.<sup>134</sup> He relies on his *Segundo al mando* or *canciller* (Second in Command or Chancellor) to mediate conflicts, seek counsel from other members of the Car, and deal with most mundane matters.<sup>135</sup> The Pran's personal security is assigned to a group of bodyguards called *los Perros* (the Dogs).<sup>136</sup> Other tasks such as the overall safety and enforcement of community norms are assigned to the Pran's trusted men whose allegorical name is *los Luceros* (Bright Lights)<sup>137</sup> and sometimes even to indigenous, court-like organs like *El Tribunal del Hampa* (the Court of the Underworld), although self-policing is also common.<sup>138</sup>

Other functions such as "tax" collection; the permit to sell cigarettes, food, drugs, alcohol, and any other commodity; or the provision of different services are also assigned based on decisions made by members of the Car.<sup>139</sup> The size and specific functions of the Car varies by prison.<sup>140</sup> In some penitentiaries there is just one Car, while in others there is a Car per each pavilion or major section.<sup>141</sup> In this case, the different Cars may coexist as a result of specific arrangements between groups, although the possibility of skirmishes or wars for control of the prison is always latent.<sup>142</sup> What appears to be a constant, however, is that Car members are hierarchically superior to the población.<sup>143</sup>

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130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. See Iglesias, *supra* note 98.

138. Interview with Andrés Antillano, *supra* note 93.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

Car members are also the only ones allowed to carry firearms and other weapons inside the prison; this is also the most visible sign of power and authority among inmates and the few state officials, whose main role seems to be merely serving as gatekeepers from the outside world and exercising minimal control over the population.<sup>144</sup> Peacekeeping is entirely left to the members of the Car. The población is only permitted to own artisanal *chuzos* or *chillones* (makeshift sharp knives), which may only be used during community-sanctioned duels at the *Coliseo* (Coliseum) or to defend themselves in case of an uprising or external attack by members of an enemy Car or prison wardens.<sup>145</sup>

### C. *From the State of Nature to the Code of the Inmate*

The social norms, customs, and other cultural parameters that govern life in prison comprise the Code of the Inmate or *La Rutina* (The Routine). None of these rules, customs, and conventions are compiled anywhere nor exist in writing. They are instead transmitted orally, through imitated behavior or restated by the Pran and his government when deliberating about matters of collective importance or adjudicating disputes. Inmates tend to consider The Routine as a self-evident value system and rarely question its legitimacy.<sup>146</sup> The general opinion seems to be that The Routine is a good thing. Inmates tend to reminisce about the times prior to the establishment of any internal order, “when [they] were all natives.”<sup>147</sup> The parallel to the concept of the Hobbesian State of Nature<sup>148</sup> is striking. According to Hobbes, the state of nature was the “natural condition of mankind” in absence of government, civilization, laws, or any other external power that can limit or restrain the natural instinct of humans.<sup>149</sup> The absence of a legal system and a government, Hobbes asserted, would cause the life of men to be “solitary, poor, nasty, brutish and short.”<sup>150</sup> The resemblance between the justification of the state by Hobbes, on the one hand, and by the Venezuelan inmates on the other, is striking.

Interestingly, some of the values reflected in The Routine such as the respect for other people’s property, the prohibition of unauthorized violence or carrying guns, acting on revenge, and gossiping or snitching are aligned with mainstream society. Others, like punishment by death, isolation, shaming, and other sanctions are definitely not aligned with the values of contemporary society or are even against the official legal system. In any case, what is important here is how—unlike in Hobbes’ example—the state of nature inside the Venezuelan prison did not produce chaos. On the contrary, the absence of the state seems to be one of the main

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144. *Id.*

145. *Id.*

146. Antillano, *supra* note 83, at 23.

147. *Id.*

148. THOMAS HOBBS, *LEVIATHAN* (Thoemmes Continuum 2003) (1651).

149. *Id.*

150. *Id.*

motivators for the inmates to organize themselves and create a social organization that takes the place of the official legal system.

The aforementioned set of rules and customs, and the individuals charged with interpreting, declaring, and enforcing those rules, are just two of the three pillars of the indigenous justice system featured in the Venezuelan prison. The court-like processes comprise a third pillar, which in combination with the other two make up a sophisticated regime that contributes to maintain social order. In the next section, I turn to explain this system in greater detail.

### III. ADJUDICATION AND ENFORCEMENT BEHIND BARS: PRAN JUSTICE, THE UNDERWORLD'S TRIBUNAL AND BEYOND

As mentioned earlier, the political and social fabric of the subculture prevailing in the Venezuelan prison incorporates a predefined set of indigenous norms whose enforcement depends on several individuals exercising specific roles. At the apex of the pyramid is the Pran who embodies the ethos of the community and has the ultimate authority when it comes to important collective decisions. The Pran decides if and when war is to be waged against other gangs or groups. He also orders any riots, strikes, or protests against the government seeking to assert the interests of his constituency. The Pran also plays the role of judge by adjudicating disputes between inmates and imposing sanctions for violations to the internal legal order.<sup>151</sup> The individual decisions made by the Pran about a particular matter and his directives issued to the general population are communicated and carried out by the Luceros or by the Pran's Second in Command.<sup>152</sup> The hierarchy is called *Luṡ* (Light), and *dar luṡ* (to give the light) is to authorize someone to do something.<sup>153</sup>

The catalog of norms, a list of possible infractions or violations, and the corresponding sanctions are not contained in any document, but the general population seems to have a clear understanding of their definition and scope.<sup>154</sup> What an outsider might consider a confusing and seemingly contradictory web of double standards, norms, and incomplete principles, inmates deem clear and legitimate.<sup>155</sup> What makes the cataloging process particularly cumbersome is the utmost discretion and secrecy of community members regarding their affairs.<sup>156</sup> The discussion or revelation to the outside world of what the community deems its internal affairs, including disclosing the identity of its members, showing pictures, showing videos, or airing out the details of a specific case, may result in several sanctions including death.<sup>157</sup> This is what—according to the media—happened to

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151. Interview with Andrés Antillano, *supra* note 93.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

former inmate Luidig Ochoa, the author of the YouTube series “Somos Ladrones” (We are Robbers) and “Carcel o Infierno” (Jail or Hell)<sup>158</sup> who was assassinated in 2014.<sup>159</sup>

Notwithstanding the aforementioned limitations, it is still possible to identify three different dispute resolution and norm enforcement processes according to the type of infraction, the circumstances surrounding its commission, and the individual or organ charged with carrying out the sanction. The first distinction that needs to be made is between infractions in which the offender is caught during the act and infractions in which the offender is not caught. The former are generally handled directly by the Luceros, who are empowered to carry out a swift sanction that is commensurate with the violation and the circumstances surrounding it.<sup>160</sup> One common example is the case of a *garitero* (night watch) who is caught asleep or distracted during his shift, therefore making the community vulnerable.<sup>161</sup> Such fault, which the inmates deem a very serious offence to the safety of the entire population often warrants an immediate execution by a Lucero.<sup>162</sup> This sanction is commonly known as the *Sueño de la Muerte* (“Sleep of Death”), in direct reference to the fact that once the sanction is applied the offender will obviously never wake up.<sup>163</sup>

Executions are often carried out swiftly, discreetly, and without any witnesses.<sup>164</sup> In fact, such sanctions are always preceded by a general order for everybody to hide and seek refuge so no one sees what happened.<sup>165</sup> Other sanctions are carried out publicly, mostly when the Pran or the Car wants to set a symbolic precedent or use them as a deterrent for the rest of the population.<sup>166</sup> Infractions that warrant the capital punishment are rare, and the Pran and his cronies do not administer death liberally either.<sup>167</sup> One of the reason why extreme punishments are avoided is because they bring negative attention and undesired visibility of the community from the government; they also create internal social tensions, which might lead to a coup against the Pran.<sup>168</sup> Moreover, killing community members negatively affects the economic equilibrium of the prison.<sup>169</sup>

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158. Luidig Ochoa, *Luidig Ochoa's YouTube Channel*, YOUTUBE, <https://www.youtube.com/channel/UCCcOJOCm7BrOPTo4fzGGZfkA> [https://web.archive.org/web/20170326082304/https://www.youtube.com/channel/UCCcOJOCm7BrOPTo4fzGGZfkA] (last visited Mar. 26, 2017).

159. Rainer Márquez Lisil, *Tocuyito: Pran “El Wilmito” Habla de Luidig Ochoa*, REPORTERO24 (Aug. 19, 2014), <http://www.reportero24.com/2014/08/19/tocuyito-pran-el-wilmito-habla-de-luidig-ochoa/> [https://perma.cc/AD9U-GZ96].

160. Interview with Andrés Antillano, *supra* note 93.

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

After all, the more people get killed the lesser the number of workers, "taxpayers," bodyguards, soldiers, and other individuals that are available.<sup>170</sup> The restriction of the use of violence to a minimum has also been reported in other case studies of the underworld, despite the general and unfounded perception that criminal syndicates and other deviant groups are predominantly disorganized and ruthless toward their own members.<sup>171</sup>

An increasingly common type of punishment is *ser anegado* or exile from the territory protected by the *Pran*.<sup>172</sup> Another alternative is the confinement of the offender to a special holding area manned by a group of evangelical inmates interestingly advertised as the "rehabilitation center."<sup>173</sup> The most common type of offenders sent there are the deadbeats or delinquent "taxpayers."<sup>174</sup>

Offenders that are not caught in the act but denounced or accused by other community members are generally afforded the possibility of taking part in a trial of sorts presided by the *Pran* with the participation of the accused, the accuser, and witnesses.<sup>175</sup> The actual process which takes place in the so-called Underworld's Tribunal varies, but it is generally comprised of an oral audience where the accused presents his defense, the accuser ratifies the charges, and character witnesses are interrogated or called on the phone if they happen to be on the outside.<sup>176</sup> Interestingly, inmates consider that their due process safeguards are better than the ones offered by the formal legal system, which they tend to consider unjust, corrupt, and illegitimate.<sup>177</sup>

A successful litigant is someone *que sabe hablar* (who knows how to talk) and who also has enough social capital so others are willing to *hablar por él* (speak on his behalf).<sup>178</sup> The ability to argue is called *tener lirica* (to have lyric, golden tongue), which depending on the circumstances might be regarded as a positive but also as a negative trait.<sup>179</sup> The latter corresponds to the perception that those who talk much are also inclined to lie and exaggerate, which in turn makes them untrustworthy.<sup>180</sup>

To any inmates, the fact that there might people with credibility willing to speak on their behalf is of the utmost importance.<sup>181</sup> Inmates depend on their connections both inside the prison and in the outside world not only when they

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170. *Id.*

171. For an interesting study that refutes the idea that the Mafia controls the markets through violence, see PETER REUTER, *DISORGANIZED CRIME: ILLEGAL MARKETS AND THE MAFIA* (1985).

172. Interview with Andrés Antillano, *supra* note 93.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*



need to defend themselves in “court,” but on a daily basis from the moment when they arrive to their place of reclusion.<sup>182</sup> In fact, the entrance of a new inmate to the prison is surrounded by a great spectacle marked by a public announcement made by the gariteros, who often yell the name of the newcomer while he crosses an area symbolically called the *La franja de Gaza* (Gaza Strip).<sup>183</sup> Soon thereafter, a representative from the evangelical community will greet the new member, and a lucero will interview him basically to confirm his identity and pass the information onto the Pran.<sup>184</sup> Most new arrivals are also greeted by someone willing to protect and vouch for them.<sup>185</sup> This is called *ser rescatado* (being rescued).<sup>186</sup>

From time to time, the manhood and courage of the new arrivals is also tested by someone who attempts to *ponerle la mano* (put their hand).<sup>187</sup> To let another put their hand on one’s shoulder might be interpreted as a sign of weakness, which might affect the person’s reputation negatively for the rest of their confinement.<sup>188</sup>

As in the case of the official legal system, the norms that govern the prison subculture sometimes require an authoritative interpretation or clarification, so they are adequately applied.<sup>189</sup> Despite their apparent clarity, interpreting the scope of the norms that comprise The *Rutina* occasionally becomes a source of conflict.<sup>190</sup> One example is when two inmates argue whether a specific conduct is “legal” or if on the contrary it constitutes a *mancha* (stain) to the rutina.<sup>191</sup> In such case, the Pran is the only one with authority to establish the correct construal of the norms.<sup>192</sup> His role is similar to that of a constitutional court in mainstream society.

#### CONCLUSION

The features of the internal normative order of the inmates described in this article put the prison subculture in a difficult place. On the one hand, it emerges and operates in an environment that glorifies violence, discrimination, and other values that run against the official legal system and mainstream society; but on the other, it mimics a highly bureaucratic order where concerns for a medieval idea of “due process,” legitimacy, and community order seem to be paramount. The high importance that the Prans and their fellow inmates have placed on their social organization and the meticulous regulation of even the most mundane of daily activities, are viewed as essential to maintain order within the community. Albeit

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182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.*

primitive in many ways, the internal legal system of the Venezuelan prison features institutions, processes, and actors that emulate the basic structure of mainstream society.

As this article showed, the absence of the state and the chaos created by the malfunctioning of its official legal institutions have incentivized Venezuelan inmates to devise their own legal system and attain a level of intra-community social control that counters the conventional wisdom that they are bound to live in chaos. The indigenous norms created by the incarcerated, regulate both the substantive rights and the means through which those rights are enforced. The draconian sanctions imposed by the Pran against those who breach the fragile internal social order of the prison are viewed as necessary measures to maintain the peace in an otherwise volatile environment. Sanctions, however, cannot be administered liberally or irrationally, because too much harshness might also provoke an uprising against the Pran and threaten the stability of his mandate. As a result, Prans are also required to consider the political implications of their decisions and constantly reassess their legitimacy or face the risk of being overthrown and killed.

The Pran justice system is primitive and flawed, but it nonetheless fulfills an important role in the penitentiary microcosm where the official legal system is largely absent. Contrary to what some would think, even those who are routinely at odds with the laws of the state and mainstream society, do not and cannot opt out entirely from all existing forms of social control. The urge to attain a minimum level of social organization, to create and abide by a set of norms and maintain order seems to become particularly important when the state fails. It appears as if some chaos is acceptable, but not total chaos.