



## David Skarbek, *The Puzzle of Prison Order: Why Life Behind Bars Varies Around the World*

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In *The Puzzle of Prison Order*, David Skarbek takes a large step in unpacking the black box of prisons. Building on his previous work studying prison gangs in the US, Skarbek (2020b) explores the variation in governance institutions across prisons worldwide. He asks why some prisons have complex, formal, extralegal governance institutions (like prison gangs) while others have few, informal, extralegal governance institutions (like the convict code). To answer this question, he utilizes comparative institutional analysis to explain the diversity of prison governance institutions that exist around the world.

Criticisms of the US criminal justice system in recent decades have focused on the immense size of the US prison system, racial disparity of the prison population, failure of prisons to rehabilitate prisoners, and collateral consequences of incarceration. The US is the leading incarcerator in the world with a prison population of just over two million people—almost double that of China (World Prison Brief 2020). If the entire population under surveillance by the criminal justice system (e.g. those on probation or parole) is included, this figure would grow to just under seven million. Including the families of those touched by the criminal justice system puts this number at 113 million people affected by the US criminal justice system (Sawyer and Wagner 2020). Within the US prison population, there is a large racial disparity. Black prisoners make up 32 % of the US prison population despite blacks constituting less than 13 % of the US population (Carson 2020, p. 22; US Census 2019).

US prisons also fail to rehabilitate prisoners. Sixty-eight percent of released prisoners recidivate—commit a new crime and are arrested—within three years of their release. The majority of these prisoners (44 %) recidivate within a year of their release (Alper et al. 2018, p. 1). The quick recidivism of former prisoners is in part due to the collateral costs of incarceration. Incarceration negatively impacts former prisoners'

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employment (Pager 2003, 2005, 2007; Pettit and Western 2004; Raphael 2014; Wakefield and Uggen 2010; Western et al. 2001; Uggen 2008), income (Beckett and Harris 2011; Katzenstein and Nagrecha 2011; Katzenstein and Waller 2015), mental and physical health (Liebling and Maruna 2011; Massoglia 2008a, b; Schnittker and John 2007; Schnittker et al. 2012), access to welfare programs (e.g. food stamps, public housing, and student loans) (Alexander 2010; Forman 2012), and political involvement (Burch 2013; Lerman and Weaver 2010, 2014; White 2019), making it especially difficult for them to reintegrate into society.

Previous efforts to address these inequities in the criminal justice system have only exaggerated them (Gottschalk 2006; Murakawa 2014). The US prison population has fallen a little over 4 % from 2014 to 2018 as a result of bipartisan reforms (Carson 2020, p. 1; Schoenfeld 2016). This fall in the prison population, however, is too slow for prison reform advocates who criticize policymakers for failing to implement structural reforms that address the racial disparity of the prison population among other issues (Herndon 2020; Jones 2020). To avoid further unintended consequences of criminal justice reform, criminal justice scholars need to unpack the black box of the prison. Many of the unintended consequences that have resulted from previous reform efforts were due to researchers' lack of understanding of the incentives prison officials and prisoners face. Researchers must understand the realities of daily prison life and how it is shaped by the interactions of these groups to identify avenues for effective reforms.

Accessing the perspectives of prison actors requires adopting a methodology that diverges from the usual reliance on big data. Instead of relying on aggregated data—which leads to treating prison like a black box—analysts must use qualitative data drawn from writings, interviews, and ethnography. Through these sources, analysts can access how different actors perceive the rules constraining their actions and the payoffs or punishments attached to those actions. As Ostrom (2005, p. 251) emphasizes, it is only the perceived potential costs and benefits that matter for individual decision making.

My own research leverages prisoner-produced media to access the perspectives of participants inside the prison. Prisoner-produced media provides researchers access to the perspective of prisoners and prison officials on proposed prison reform. For example, the *San Quentin News*—produced by prisoners at San Quentin State Prison in California—provided prisoner feedback regarding the July 2019 ruling by the California Supreme Court that state prisons are not allowed to use private prisons to house state prisoners. *San Quentin News* staff interviewed prisoners who had returned to San Quentin from private prisons in other states. These prisoners expressed dissatisfaction with being back in California state prisons, saying “those [private] prisons are much better than California institutions, even though they dislike the separation from their families” (Roy 2019, p. 1). Aron Kumar Roy—a *San Quentin News* writer—gives the following account of his interview with one recently returned prisoner: “I was pissed off when I found out I was coming back to the state. Prison out there was much better,” said inmate Michael ‘Kofy’ Taylor. ‘The overall feeling was better out there. The living quarters were much more comfortable,’ Taylor said, in agreement with the general sentiment among the several other San Quentin inmates interviewed, ‘Those facilities weren’t overcrowded like the ones in state. The cells were so big there. They were actually comfortable for two men to live in.’” (Roy 2019, p. 1).

This example demonstrates the nuanced approach to prison reform necessary for effective reforms. The California Supreme Court ruling was a response to public opinion that regards private prisons as evil. What the *San Quentin News* staff's interviews reveal is that this is not necessarily true to prisoners' experience. Some private prisons are poorly operated and fail to meet the standards set by the states that utilize them, while others perform better than state prisons, providing prisoners with more resources and safer environments in which to live (Cabral et al. 2010; Tabarrok and Logan 2003).

Effective reform requires utilizing qualitative data that not only demonstrates the perspectives of prisoners and officials, but also highlights this variation in prison orders. In his interview with the *San Quentin News*, Michael 'Kofy' Taylor attests that "the overall feeling was better" at the private prison at which he had been housed than at San Quentin. With fewer prisoners and greater access to resources, there were probably fewer conflicts between prisoners and less violence. Without accessing qualitative evidence that can attest to the variation in prison order, prison remains a black box and effective reforms are less likely.

In *The Puzzle of Prison Order*, Skarbek argues that the supply and demand for governance in prison determines the presence and quality of extralegal governance institutions. Governance institutions, as he defines them, are institutions that protect property rights and facilitate exchange. Extralegal governance institutions, in the prison context, are those created and enforced by prisoners. These are in contrast to legal governance institutions that are created and enforced by prison officials. If prison officials provide extensive, high-quality governance institutions, then there will be few, informal extralegal governance institutions because prisoners can rely on officials for the protection of themselves and their property. In contrast, if prison officials provide little, low-quality governance institutions, then there will be complex, formal extralegal governance institutions that provide property rights protection for prisoners.

Skarbek develops four categories of governance regimes found in prisons around the world: (1) official governance; (2) co-governance; (3) self-governance; and (4) minimal governance. Official governance regimes are those in which prison officials are prisoners' main source for resources, administration, and governance. Co-governance regimes are those in which prisoners cooperate with officials to govern the prison. Self-governance regimes are those in which prisoners create and enforce governance institutions that are distinct from the official prison administration. In minimal governance regimes, neither prison officials nor prisoners create or enforce governance institutions. Which of these prison governance regimes prevails depends on the characteristics of the prison population and the level of officially provided governance. The specific characteristics of extralegal governance institutions depend on the characteristics of the prisoner population. Larger, more heterogeneous populations will develop more formal extralegal governance institutions, such as prison gangs. Small, more homogeneous populations will develop informal extralegal governance institutions, such as social norms.

In *The Puzzle of Prison Order*, Skarbek contributes to the growing prison literature in the social sciences by applying comparative institutional analysis to the prison context to develop a general theory of the variation of prison order. Previous studies of prison orders have historically consisted of in-depth case studies of single prisons (with the exception of Butler et al. 2018; Cavadino and Dignan 2005; Crewe 2015; DiIulio 1987; Kruttschnitt and Gartner 2005; Sparks et al. 1996). He contributes to the economics literature on prisons by leveraging ethnographies that provide access to the

perspectives of those operating inside the black box of prisons. Ethnographies provide the institutional details necessary to understand the governance institutions operating within the prison. Traditional methods of statistical causal inference cannot explain the variation in institutions (Skarbek 2020a). Skarbek also contributes to the governance literature in economics through his reliance on ethnography to do comparative institutional analysis. He extends the work of Elinor Ostrom (1990, 2005) to prisons by demonstrating the creativity of prisoners and their ability to overcome situations of conflict and transform them into situations of cooperation. He builds on his previous work, demonstrating that, even in the “hard case” of prisons, self-governance is possible (Leeson 2014; Skarbek 2014).

The strengths of this book lie in Skarbek’s use of ethnographies through which he accessed the institutional details of each prison and the perspectives of the participants therein. Skarbek was deliberate in his choice of case studies. He selected cases on the explanatory variable, i.e. whether the provision of official governance is low, medium, or high. To explore variation in informal extra-legal governance institutions, Skarbek selected cases with similar levels of official governance that only vary on specific characteristics of the prison population: population size, outside social networks, and population demographics.

Skarbek examines prisons in five different countries. In chapters two through four, he presents case studies that demonstrate the range of prison governance regimes. He finds co-governance and self-governance regimes in Latin America (chapter 2), official governance regimes in Norway (chapter 3), and a minimal governance regime at the Andersonville prison camp (chapter 4). In chapters five through seven, Skarbek explores how prisoner population characteristics influence the extralegal governance institutions that prisoners develop. He selects prisons with medium levels of officially provided governance but differ according to prison population size (chapter 5), social networks (chapter 6), and homogeneity (chapter 7).

Skarbek draws two main lessons from his analysis: (1) that prisons provide an arena to test self-governance theories (specifically, the viability of self-governance, the influence of social distance on social organizations, and the role of ethnicity in governance institutions) and (2) that government intervention in communities where mutual responsibility systems prevail would help to protect individuals’ rights and freedoms. This first lesson comes from his survey of prisons around the world and is well-founded in his analysis. His second lesson is drawn from the difference in prison environments between the California men’s prisons where gang mutual responsibility systems prevail and the absence of such systems in smaller prisons around the world. This conclusion that government intervention is desirable in the case of mutual responsibility systems runs counter to the rest of his book.

Extra-legal governance institutions arise in response to demand for greater property rights protection and access to resources. In other words, extra-legal governance institutions (e.g. mutual responsibility systems) are a response to failures of legal governance institutions (e.g. government) to adequately provide property rights protection and access to resources. Bringing in outside, top-down efforts to solve governance issues is likely to produce more problems than solutions (Boettke et al. 2008). With regard to prisons, Skarbek (2014) suggests official governance mechanisms cannot fully address the demands of prisoners because many of the resources that prisoners demand are those explicitly prohibited by prison authorities (cellphones,

drugs, specific foods, etc.). More government via increased official governance mechanisms will not meet this demand. Instead a restructuring of the prison system in the US (though costly) would better address the compromised individual freedoms and rights that arise as part of prison gangs' mutual responsibility systems. Small prisons with smaller populations will not need to rely on prison gangs for the property rights protection and resources they demand—as Skarbek has demonstrated in *The Puzzle of Prison Order*. Instead, prisoners could rely on informal self-governance institutions like those found in prisons around the world.

The main limitations of this research, as Skarbek identifies, include that (1) the broad nature of the question precludes standard statistical models of causal inference and (2) detailed qualitative studies of prisons only focus on a single prison or country. In addition to these, Skarbek does not explain why prison officials vary in their provision of official governance or why a regime becomes either co-governing or self-governing when the provision of official governance is limited. His analysis also cannot identify from where the specific governance institutions that emerge in prisons around the world originate. Why do those specific institutions emerge and not others?

*The Puzzle of Prison Order* provides a rich foundation for future research. Skarbek's categorizations of governance regimes will be helpful for future research that examines the difference between jails and prisons in the US. Since the 1980s, both have had surging prison populations. Those incarcerated in both experience negative collateral costs of their incarceration. Jails, in particular, are plagued by high rates of violence. In comparison, prisons are relatively peaceful, despite their housing a higher proportion of those convicted for violent crimes. Examining the variation in governance institutions using Skarbek's theory may help researchers explain and address that variation in violence.

Skarbek's governance theory lends to studies of prison order that focus on how governance regimes change overtime. As prison populations grow and the provision of official governance changes, prisoner social orders will adapt to those changing conditions, much like those in California men's prisons (Skarbek 2014). Such studies will help researchers identify the effects of prison organizational changes on the internal prison order. Changes that may seem to promote prison management may actually undermine it.

This book also has implications for prison reform efforts. Any effort to reform prisons to improve the prison environment needs to consider the demand of inmates for property rights protection and how extralegal governance institutions meet that demand. Efforts to improve prisoner safety may actually incite greater violence by undermining extra-legal governance institutions. Prisons deserve much more attention from scholars, particularly those in economics, than they have received thus far. They represent an ideal experiment to unpack how and when different governance institutions succeed and when they fail. Understanding how prisons operate internally is a necessary step in implementing successful prison reforms.

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