

# Prison Conditions

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*In American prisons, two of the worst pathologies—hypermasculine performance and gang activity—are best understood as strategies of self-help engaged in by people who cannot trust the prison authorities to keep them safe. Given the choice, the overwhelming majority of people in prison would prefer to drop the mask and be themselves. But letting down one’s guard is a luxury enjoyed only by people who feel safe. If we want the people we incarcerate to grow and change, we need to design and operate the prisons so that people can be in company with others without needing to be constantly afraid. In this chapter, I identify several strategies prison administrators can pursue in their facilities right now to reduce the threat of violence in men’s prisons and therefore enhance prisoners’ safety without resorting to solitary confinement. But keeping people safe while enabling them to interact with others, though essential, is not sufficient. It is also necessary to provide access to meaningful pursuits that can give individual prisoners a sense of purpose. Only then will people living behind bars be able to fully step away from the culture of the prison and reorient themselves in a healthy, pro-social, and productive direction.*

## I. THE PROBLEM AND WHY WE SHOULD CARE

Over the past few years, mass incarceration has become a widely acknowledged fact of the American penal system.<sup>1</sup> So has the racial skew of this phenomenon, with its marked overrepresentation of people of color, and African-Americans in particular.<sup>2</sup> Equally well-recognized are the ways expansion of imprisonment has compromised a range of institutions and

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1. See, e.g., Todd R. Clear & James Austin, “Mass Incarceration,” in the present Volume.  
2. See, e.g., Cassia Spohn, “Race and Sentencing Disparity,” in the present Volume.

social goods necessary for a healthy, well-functioning polity, including stable families and communities, access to education, housing, and employment, and fair opportunities for democratic participation.

With this awareness has come a seeming agreement across the political spectrum that the American prisoner population must be reduced. Efforts to this end have emerged across the country, in red states as well as blue. All this is to the good. But what is often missing from the policy discussion is consideration of what the dramatic expansion of the American carceral system has meant for the day-to-day experience of the more than 2.2 million men and women currently living behind bars in the United States.<sup>3</sup> A conversation focused solely on how to reduce this number risks missing the obvious fact that, in the meantime, the American carceral system is failing daily to ensure safe and humane conditions for the people who live inside.

Why should this failure concern us? My own view is that keeping people safe and enabling them to live productive and meaningful lives even while they are locked up is a moral imperative, a non-negotiable obligation society has towards the people it has chosen to incarcerate. This view is increasingly shared by people across the political spectrum, including many Evangelical Christians, whose faith informs a deep commitment to second chances and the possibility of redemption, and who therefore refuse to see people only in terms of the worst thing they have ever done.<sup>4</sup>

But there are also at least two purely instrumental reasons for caring what life is like for those in prison. The first is public safety. In the United States, the vast majority of people who wind up behind bars are eventually released,<sup>5</sup> which means that treating people inhumanely while they are in custody is ultimately self-defeating.<sup>6</sup> America's prisoners are already among society's most disadvantaged members: disproportionately likely to be suffering from

3. *Criminal Justice Facts*, SENT'G PROJECT, <http://www.sentencingproject.org/criminal-justice-facts/> (last visited Mar. 28, 2017).

4. See, e.g., Galen Carey, *Limit the Use of Solitary Confinement in Prisons and Jails*, NAT'L ASS'N EVANGELICALS (Feb. 25, 2014), <https://www.nae.net/limit-the-use-of-solitary-confinement-in-prisons-and-jails/>; *Alternative Punishment for Nonviolent Crimes*, NAT'L ASS'N EVANGELICALS (Nov. 2013), <https://www.nae.net/alternative-punishment-for-nonviolent-crimes/>; *Support for Smarter Sentencing Act*, NAT'L ASS'N OF EVANGELICALS (Aug. 1, 2013), <https://www.nae.net/support-for-smarter-sentencing-act/>.

5. See generally Susan Turner, "Reentry," in the present Volume.

6. See TIMOTHY HUGHES & DORIS JAMES WILSON, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, REENTRY TRENDS IN THE UNITED STATES (2004), <https://www.bjs.gov/content/pub/pdf/reentry.pdf> ("At least 95% of all State prisoners will be released from prison at some point; nearly 80% will be released to parole supervision.").

drug addiction, severe mental illness, and learning disabilities; to be indigent, unskilled, and poorly educated; and to have been subjected to serious abuse and/or neglect as children.<sup>7</sup> Given the fear, stress, and deprivation that prison frequently entails, being incarcerated for extended periods is almost certain to leave people even more unfit for law-abiding and productive lives than when they went in. Even those individuals who manage to stay relatively safe and healthy while inside are likely to find it difficult to adjust to freedom after years of constant tension and watchfulness in an environment that fosters distrust and apprehensiveness towards others. Under these circumstances, it should be no surprise that some people who have done time respond to the considerable challenges of returning to society with anger, aggression, and even violence. This is plainly no way to encourage successful reentry. And absent effective social reintegration of the people newly released from prison, the harms the carceral system inflicts are sure to be exported, one way or another, to the community at large.<sup>8</sup>

The second instrumental reason to care if people in custody are treated humanely is that the safety and well-being of prison staff may depend upon it. Prisons that are scary and stressful for prisoners are also scary and stressful for the correctional officers (COs) and other staff who work inside. COs have some of the highest levels of depression, anxiety, substance abuse, and suicide of any profession.<sup>9</sup> Their families also suffer an elevated risk of violence at home.<sup>10</sup> All these pathologies are manifestations of the extreme stress and psychic pain COs and other prison staff can experience on a regular basis in environments defined by anger, resentment, tension, and fear. Prisons cannot be safe and healthy places to work unless they are safe and healthy places to live.

What would a safe and healthy prison look like? At a minimum, in such places, personal security could be taken for granted, and people would have no

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7. Cf. Stephen J. Morse, "Mental Disorder and Criminal Justice," in Volume 1 of the present Report; Margo Schlanger, "Prisoners with Disabilities," in the present Volume.

8. Not to be overlooked is the significant public health dimension of this concern: the close quarters and insufficient institutional attention to prisoners' health also makes prisons breeding grounds for all manner of infectious diseases, including hepatitis C, MRSA, various STDs (HIV, syphilis, gonorrhea, etc.), and even tuberculosis. The failure to take prisoners' health seriously creates an increased risk of the spread of these conditions to families and communities once people are released from custody. I thank Sean Barry for sharing his expertise on this issue.

9. See JAIME BROWER, OFFICE OF JUSTICE PROGRAMS DIAGNOSTIC CENTER, U.S. DEP'T OF JUSTICE, CORRECTIONAL OFFICER WELLNESS AND SAFETY LITERATURE REVIEW 10–12 (2013), [https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/CorrectionalOfficerWellnessSafety\\_LitReview.pdf](https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/CorrectionalOfficerWellnessSafety_LitReview.pdf).

10. See Colby Valentine et al., *Correctional Officers and Domestic Violence: Experiences and Attitudes*, 27 J. FAM. VIOLENCE 531 (2012).

need to be constantly looking over their shoulders. Removing all trace of fear would allow people living in custody to be calm and unafraid in the company of staff and other prisoners and to focus on building the most meaningful lives possible within the confines they face. The priority could be on personal growth and self-development, not mere survival. In such a climate, the way would be open for individuals to interact with others on terms of mutual respect and to decide for themselves how they want to conduct themselves, rather than having their priorities and reactions determined by others.

Unfortunately, the conditions of life in too many prisons around the country—especially men’s prisons, on which I focus here<sup>11</sup>—diverge substantially from this vision. Instead, every day, hundreds of thousands of people, not trusting the authorities to keep them safe, feel compelled to engage in various forms of self-help in a bid to assure their own safety. Such strategies range from constant vigilance and wary reticence in all interpersonal interactions to hypermasculine posturing and even aggression toward others in the hope of deterring would-be victimizers.<sup>12</sup> In this environment, gang affiliation is a rational response.

As might be expected, living this way over extended periods takes a serious toll, physically as well as psychologically. Given the choice, the overwhelming majority of people in prison would prefer an environment in which they could drop the mask and be themselves. But letting down one’s guard is a luxury enjoyed only by people who feel safe. The key to humane prison conditions lies in this simple truth: prisons are tense and dangerous places to the degree that prisoners feel unsafe. If we want the people we incarcerate to grow and change, and if we want them to cultivate a capacity for productive and pro-social engagement with others and the world around them, we need to create the conditions in which personal growth is a conceivable possibility. This means designing and operating prisons so that people can be in company with others without needing to be constantly afraid and on guard.

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11. Although my focus in this chapter is on men’s prisons, many of the lessons to be drawn—most notably the need to keep people in custody safe from harm, to treat them with respect, and to provide decent living conditions and access to humanizing pursuits—apply equally to women’s prisons.

12. See generally Sharon Dolovich, *Two Models of the Prison: Accidental Humanity and Hypermasculinity in the L.A. County Jail*, 102 J. CRIM. L. & CRIMINOLOGY 965, 1002–13 (2012) [hereinafter Dolovich, *Two Models*]. Trans women housed in men’s facilities have a different set of strategies to keep themselves safe. These often involve “hooking up” with a more powerful male-identified prisoner, exchanging sexual access for protection from violence and predation by others. See Sharon Dolovich, *Strategic Segregation in the Modern Prison*, 48 AM. CRIM. L. REV. 1, 11–19 (2011) [hereinafter Dolovich, *Strategic Segregation*]; see also Dolovich, *Two Models*, *supra*, at 1025.

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To be sure, even as it is, many people do manage to grow and develop in positive and productive ways while in prison. But in most cases, this feat is achieved in spite of the prison environment, not because of it. Any prison redemption story will always feature some account of how the narrative's subject managed to ensure their own safety. If personal growth and self-reflection are to be possible for more than just a lucky few, prison administrators and policymakers must make a priority of keeping everyone safe. A person cannot grow and mature, much less repent or feel remorse, if they are perpetually scared, stressed out, or on edge.

Some facilities currently opt to ensure the safety of vulnerable prisoners with what is euphemistically known as “protective custody,” but which in reality is simply social isolation in solitary confinement. The logic is understandable: someone locked down in a single cell at least cannot be stabbed or raped by fellow prisoners. But this approach is no real solution, for two reasons. First, a strategy of social isolation cannot be scaled. It is simply too expensive and resource-intensive to hold all prisoners in solitary confinement. Second and more importantly, if the goal is meaningful self-reflection and personal growth on a path to productive pursuits and effective social integration, social isolation is entirely counterproductive.<sup>13</sup> Recent experiments with extended solitary confinement in American prisons have made clear that this carceral practice causes serious psychological harm, leaving people deeply ill-equipped to engage with others in healthy, pro-social ways. In one authoritative study of long-term solitary in California's Pelican Bay prison, Craig Haney found that “nearly 90% of inmates suffered a psychopathological effect, and nearly half suffered from ‘extreme forms of psychopathology,’” including suicidal ideations, hallucinations, perceptual distortions, chronic depression, social

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13. In practice, solitary confinement cannot even guarantee physical safety. For one thing, in many facilities, people in solitary confinement—including protective custody—are often double celled, which means that people are locked up in pairs in a very small space with access to few if any pro-social outlets for the frustration and anger such conditions will inevitably engender. There is thus a real danger of in-cell violence between cellmates. And even when people in solitary are single celled, doors can be unlocked and access achieved regardless of policy. The myriad cases of physical and sexual assault against people being held in protective custody testify to this disturbing reality.

withdrawal, confused thought processes, and irrational anger.<sup>14</sup> These findings should have come as no surprise. More than a century ago, in an 1890 case challenging solitary confinement in Colorado prisons, the United States Supreme Court roundly condemned this custodial practice, which had been widely used in several states, most notably New York and Pennsylvania.<sup>15</sup> The problem, the Court explained, was the psychological damage it caused:

A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community.<sup>16</sup>

It turns out that social interaction is necessary for psychological stability and mental health. Without it, it may not take long for individuals to lose the capacity for ordinary pro-social interaction. What people need in prison is safety without isolation.

There are many strategies available to prison administrators to pursue in their facilities that would reduce the threat of violence in men's prisons and therefore enhance prisoners' safety without resorting to solitary confinement. In this chapter, I identify several such strategies. But keeping people safe while affording them an ongoing ability to interact with others, though essential, is not sufficient. It is also necessary to provide access to meaningful pursuits

14. See John Stinneford, *Original Meaning and the End of Long-Term Solitary Confinement* (unpublished manuscript) (on file with the author) (quoting Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49 *CRIME & DELINQ.* 124, 127 (2003)). One 2010 study, undertaken by the Colorado Corrections Department, seemed to reach the opposite conclusion, finding "not just a lack of deterioration in mental health after long periods with virtually no human contact, but also, incredibly, some slight improvement." Susan Greene, *Greene: Questioning Study that Showed Inmates in Solitary Get Better*, *DENVER POST* (Nov. 6, 2010), <http://www.denverpost.com/2010/11/06/greene-questioning-study-that-showed-inmates-in-solitary-get-better/>. But that study was widely criticized on methodological grounds, and is at odds with the great weight of the evidence, which overwhelmingly bears out Haney's findings. For a critical analysis of the Colorado study, see Stuart Grassian, "*Fatal Flaws*" in the Colorado Solitary Confinement Study, *SOLITARY WATCH* (Nov. 15, 2010), <http://solitarywatch.com/2010/11/15/fatal-flaws-in-the-colorado-solitary-confinement-study/>.

15. *In re Medley*, 134 U.S. 160, 168 (1890). In the late 18th and early 19th centuries, Pennsylvania and New York pioneered this approach, designing entire carceral facilities on a model of solitary confinement. But it quickly became clear that, instead of promoting self-reflection, enforced social isolation was an incubator for extreme psychological dysfunction of the sort Haney found at Pelican Bay.

16. *Id.* at 168.

that can give individual prisoners a sense of purpose. Only then will people living behind bars be able to fully step away from the culture of the prison and reorient themselves in healthy, pro-social, and productive directions.

The remainder of this chapter proceeds as follows. Part II briefly identifies two key reasons for the current state of American prisons: extreme overcrowding and the commitment to penal harm that defined the American approach to punishment for the past three decades or more. Part III zeroes in on the worst defining pathologies of the inmate culture in many men's prisons—hypermasculine performance and gang activity—and locates their persistence in the constant fear experienced by people who live 24/7 in environments where their physical safety cannot be guaranteed. Part IV explores the limits of back-end judicial review as the primary means to regulate prison conditions. It argues that, notwithstanding the ongoing importance of constitutional review, the most promising mechanism for significantly improving the lives of prisoners is direct, front-end policymaking by those actors with the authority to decide how prisons are run. Part V is the practical heart of the chapter. It identifies a number of reforms that, if implemented, would go far to improving conditions of confinement in American prisons. Part V.A focuses on several macro-level changes—most prominent among them a major reduction in prison overcrowding nationwide—that would make a profound difference to prisoners' quality of life. Unfortunately, as Part V.A explains, such changes would require both considerable financial investment and a deep ideological shift in the nation's disposition toward prisoners, and are thus unlikely to come about in the near term. The remainder of Part V is therefore focused on more localized policy initiatives that are currently available to policymakers. Part V.B offers seven recommendations in the areas of classification and monitoring and of staff-prisoner relations, and Part V.C identifies two further strategies designed to promote positive personal growth and self-respect on the part of people in custody, who typically lack avenues for either. Although none of these recommendations will entirely transform the prison environment, each promises to reduce violence on the inside and thereby to ease the debilitating stress and fear that many people in prison live with on a daily basis. As Part V.C explains, this change would open the way for people in prison to pursue meaningful personal projects and cultivate a sense of purpose beyond mere survival—and suggests that, the more they are able to do so, the safer and more humane the prison environment is sure to be. Finally, Part VI calls attention to the unmistakable connection between safety and humanity, and the vital lesson

to be gleaned from this link—that we can never hope to ignite and deepen in the people we incarcerate a respect for the worth and humanity of others unless and until we are prepared to extend the same respect and recognition to them.

Although this chapter is focused largely on prisons, in many respects, the challenge of ensuring prisoners’ personal safety is still greater in jails.<sup>17</sup> This is especially the case in big jails with constant turnover, where housing assignments are often based on the most cursory classification assessments.<sup>18</sup> In such facilities, the steady population churn only intensifies the fear of violence, as detainees continually find themselves in close proximity to new and unknown companions, any one of whom may pose a threat. Still, many of the strategies I identify as likely to improve the safety of people in prison are applicable to the jail context as well<sup>19</sup>—as is the baseline precondition for deep and lasting reform to the conditions of confinement: a substantial reduction in the sheer number of people being held behind bars.<sup>20</sup>

## II. HOW DID WE GET HERE? OVERCROWDING AND THE COMMITMENT TO PENAL HARM

Even at the best of times, the project of ensuring safe and humane conditions for people in prison is a challenging one. When the state incarcerates, it removes people from their homes and communities and holds them against their will, in close quarters with total strangers, for days, months, and even years at a time. However justified the state may have been in taking this step, people in this position are nonetheless likely to be frustrated, resentful, and angry, not to mention scared and even traumatized by the experience.

Now imagine adding to this potent mix the pressures created by chronic overcrowding. Every carceral facility is designed and built to a rated capacity reflecting the number of prisoners it is equipped to accommodate. This measure pertains not only to the number of beds and minimum square footage of living

17. Prisons, administered by the state, are those facilities designed to hold people sentenced to more than one year. Although people regularly come and go, the average prison sentence is 4–5 years, which means that people in prison typically settle into their housing units and build their lives as best they can within obvious constraints. Jails, by contrast, are run by local municipalities. They hold people awaiting trial or sentencing or people who receive custodial sentences of less than one year.

18. Nationwide, approximately 10–12 million people are booked into jail annually. Many are out in a few hours, but many others stay for months and in some cases even for years.

19. Indeed, it was through my research in the L.A. County Jail, the biggest jail system in the country, that I developed my understanding of many of the strategies I propose in Part V of this chapter.

20. See, e.g., Megan Stevenson & Sandra G. Mayson, “Pretrial Detention and Bail,” in Volume 3 of the present Report; Clear & Austin, *supra* note 1.

space per person, but also to the space allotted for the many services every institution must provide, including medical clinics, infirmary beds, mental-health services, kitchens and dining rooms, laundry, canteen, law libraries, educational programming, and recreation. When prisons are overcrowded, it is not just that prisoners are jammed into dormitories or doubled up into small cells designed for a single person. Overcrowding also means that there is insufficient capacity for all these vital services, which all but guarantees that illness and disease will go untreated, that people will face long waits for pretty much everything, and that levels of frustration, stress, and anger will remain high. In the prison context, this is a recipe for disorder, volatility, and violence.<sup>21</sup> Adding to the dysfunction is the fact that, in overcrowded prisons, most people will lack access to meaningful and productive pursuits that might provide a reason to resist the pathological dynamics such environments breed.

Overcrowding is thus a major reason why conditions in American prisons and jails are as unsafe and unstable as they too frequently are. A second reason is the decades-long commitment among policymakers to what Francis Cullen once called the philosophy of “penal harm.” On this approach, “the essence of the penal sanction is to so harm or hurt offenders that they will stop offending to avoid a continuation or repeat of penal harm.”<sup>22</sup> Regardless of whether penal harm is an effective way to reduce crime—a doubtful proposition<sup>23</sup>—

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21. As psychiatrist Terry Kupers explains,

In crowded, noisy, unhygienic environments, human beings tend to treat each other terribly. Imagine sleeping in a converted gymnasium with 150 to 200 prisoners. There are constant lines to use the toilets and phones, and altercations erupt when one irritable prisoner thinks another has been on the phone too long. There are rows of bunks blocking the view, so beatings and rapes can go on in one part of the dorm while officers sit at their desks in another area. The noise level is so loud that muffled screams cannot be heard. Meanwhile the constant noise and unhygienic conditions cause irritability on everyone’s part. Individuals who are vulnerable to attack and sexual assault—for example, smaller men, men suffering from serious mental illness, and gay or transgender persons—have no cell to retreat to when they feel endangered.

Terry A. Kupers, *Prison and the Decimation of Pro-Social Life Skills, in THE TRAUMA OF PSYCHOLOGICAL TORTURE* 127, 130 (Almerindo Ojeda ed., 2008). As Kupers puts it, “[i]s it any wonder that research clearly links prison crowding with increased rates of violence, psychiatric breakdowns, rapes, and suicides?” *Id.*

22. *NCJRS Abstract*, NAT’L CRIM. JUST. REFERENCE SERV., <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=156425> (last visited Aug. 7, 2017) (providing an abstract of Francis T. Cullen, *Assessing the Penal Harm Movement*, 32 J. RES. CRIME & DELINQ. 338 (1995)); see also Cullen, *supra*, at 341–43 (discussing TODD R. CLEAR, *HARM IN AMERICAN PENOLOGY: OFFENDERS, VICTIMS, AND THEIR COMMUNITIES* 4 (1994)).

23. See generally Daniel S. Nagin, “Deterrence,” in the present Volume; Shawn D. Bushway, “Incapacitation,” in the present Volume.

this disposition has for decades fed a collective indifference to the personal security and well-being of the people society has chosen to incarcerate, and an utter unconcern with whether, while they are inside, they will have access to the means to preserve their personal identities and to grow and develop as moral actors. Instead, thanks to the penal harm philosophy, warehousing—in demoralizing, dehumanizing, and often dangerous conditions—became the order of the day. Throw in insufficient staffing and the adversarial “us” versus “them” dynamic between prisoners and staff that frequently defines the culture of the prison, and you have an environment in which people in custody cannot rely on prison officials to keep them safe.

### III. WHAT HAPPENS IN PRISON WHEN PEOPLE ARE AFRAID? HYPERMASCULINE POSTURING AND PRISON GANGS

When people in prison realize that the staff cannot guarantee their safety, they do what anyone would do in the same situation: they avail themselves of whatever forms of self-help seem most likely to ensure their own protection. In prisons that are overcrowded, understaffed, and under-resourced, people generally have only two options: protect themselves as best they can on their own, or band together with other prisoners in a collective bid for mutual security.

Each of these strategies carries its own pathologies. At the individual level, this situation generates what might be called a *hypermascularity imperative*.<sup>24</sup> This imperative puts pressure on people to seem “hard and tough, and [not] show weakness.”<sup>25</sup> The archetype of the stoic, weightlifting, muscle-bound prisoner has its origins in this dynamic. The imperative not to be seen as weak can dominate the lives of men in custody, especially in high-security facilities. Men cannot be perpetually violent, but they can—and in the worst prison environments, must—be constantly vigilant lest they convey an impression of vulnerability. This pressure on prisoners can feed a culture of belligerence, posturing, emotional repression, and ready violence that rewards indifference to others and impels the strong to victimize the weak.

Such an environment, moreover, is fertile ground for prison gangs, which represent the primary vehicle for mutual protection. Gang culture thrives where people are afraid and anxious not to be seen as weak.<sup>26</sup> The gang code

24. See Dolovich, *Two Models*, *supra* note 12, at 971.

25. See Derrick Corley, *Prison Friendships*, in *PRISON MASCULINITIES* 106 (Don Sabo et al. eds., 2001).

26. As Haney explains, “[g]angs only flourish in a jail or prison society where there is a strong undercurrent of fear and reminders of one’s own vulnerability.” Craig Haney, *The Perversions of Prison: On the Origins of Hypermascularity and Sexual Violence in Confinement*, 48 AM. CRIM. L. REV. 121, 136 (2011). See generally Scott H. Decker, “Gangs,” in Volume 1 of the present Report.

demands overt and persistent displays of toughness and invulnerability, as well as a propensity for violence—all core components of hypermasculinity. At the same time, demonstrated dedication to the rigors of gang life is the perfect way to command respect and protect against aspersions of weakness, cowardice, or being a “sissy.” For men in custody, gang involvement—especially in a leadership role, which can carry power and status—helps to ensure personal security in a climate in which the unaffiliated make easy targets.

The collective dehumanization of people in custody has fueled a notion of prisoners as subhuman—and, at the extreme, as animals or even monsters.<sup>27</sup> To some extent, this is simply rank animus. But to many outsiders, hypermasculine performance and the prison gang culture it feeds can seem so inexplicable, so amoral, so Hobbesian state-of-nature that it is hard to feel empathy and understanding. What many observers fail to recognize, however, is that, especially in general population (GP) units,<sup>28</sup> hypermasculine posturing is a mechanism of self-protection employed by people who feel vulnerable to harm. As for the ubiquity of prison gangs and related pathologies, although GP units vary between—and even within—institutions in the degree to which residents feel at risk, men in GP nearly always feel the need to band together and collectively project an image of toughness and implacability in order to ensure their mutual protection.<sup>29</sup>

It is crucial to recognize that the vast majority of people who live this way would not do so if they felt they had a choice. In most cases, prisoners’ hypermasculine posturing and ensuing pathologies arise not from an inherent preference for violence, but from fear. It may, in other words, not be the prisoners who make the prison, but rather the prison—and in particular the widespread failure of the system to keep people safe—that makes the prisoners.<sup>30</sup>

This way of living, if adaptive, is nonetheless deeply corrosive, psychologically and morally as well as physically. Many people do their best to stay away

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27. See Sharon Dolovich, *Exclusion and Control in the Carceral State*, 16 BERKELEY J. CRIM. L. 259, 288–95 (2011) (explaining the process by which people with criminal convictions are socially constructed as “moral monsters” and identifying the social purposes this construction may serve).

28. These same dynamics are also evident in specialized housing units—for example, the massive “sensitive needs yards” in the California prisons. But they are often definitive of the GP experience, which is why I focus on GP here.

29. As Shon Hopwood observes in a memoir of his time in federal prison, “[y]ou can try to serve your time outside a circle of protection, but chances are you will be stolen from, beat on, and generally abused.” SHON HOPWOOD, *LAW MAN* 63 (2012).

30. For a powerful and moving account of the process by which this transformation occurs, see Haney, *supra* note 26.

from its most extreme manifestations. They keep their heads down and try to do their own time. And depending on the facility, this strategy may well be successful. But any such success is always provisional, and many find the pressure impossible to resist.

As already noted, there are many reasons why it is incumbent on state officials to take steps to shift this set of pathological dynamics in a healthier direction. In Part V, I suggest ways this desirable end might be achieved. But first, I consider the question of how, legally speaking, this situation has been allowed to continue. Surely, the conditions described here cannot be constitutional. But if so, where are the courts?

#### IV. WHERE ARE THE COURTS? THE LIMITS OF CONSTITUTIONAL LAW AND THE NEED FOR FRONT-END POLICY REFORM

The Eighth Amendment to the United States Constitution prohibits the infliction of “cruel and unusual punishment.”<sup>31</sup> Although framed in the negative, as something the state may not do, the ongoing nature of incarceration means that the Eighth Amendment in fact imposes on the state a non-negotiable affirmative obligation to provide people in prison with “the minimal civilized measure of life’s necessities.”<sup>32</sup> The state, in other words, must meet prisoners’ “basic human needs.”<sup>33</sup> It is beyond question that this obligation encompasses the provision of adequate food and water, protection from extreme temperatures, clean and dry living quarters, and adequate medical and mental-health care. These are basic needs that all human beings must satisfy if they are to avoid serious physical and psychological suffering. But in addition, by virtue of their incarceration, prisoners also need an assurance of physical safety, and this need too is one the state is constitutionally obligated to meet. It is plainly cruel to punish criminal offenders with the strap,<sup>34</sup> with rape, or with any other form of brutal corporal treatment. And for the same reason, the state may not place incarcerated offenders in a position of ongoing vulnerability to assault, thus creating conditions that would amount to the same thing.

In part, the state’s affirmative obligation to ensure the physical safety of the people it incarcerates reflects an imperative to prevent the physical pain and

31. U.S. CONST. amend. VIII.

32. *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

33. See *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 200 (1989). As Chief Justice Rehnquist put it, “when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.” *Id.* at 199–200.

34. See *Jackson v. Bishop*, 404 F.2d 571, 579 (8th Cir. 1968).

suffering attendant on bodily assault.<sup>35</sup> But the need to keep people safe arises equally from the need to minimize the severe *psychological* harm experienced by people in situations of insecurity and uncertainty about their personal safety. There is something deeply dehumanizing about living for extended periods in a state of fear. At worst, people in such circumstances exist in a perpetually anxious and even traumatized state, bereft of any peace of mind and ready to protect themselves whatever the cost. But fear need not reach this fever pitch to take a serious toll. The experience of living in an unsafe environment for months, years, or even decades is sure to be psychologically corrosive even for those able to find pockets of psychic repose.

The Supreme Court has held that prison officials violate the Eighth Amendment when they are “deliberately indifferent” to a substantial risk of serious harm to prisoners. In *Farmer v. Brennan*, the Court held that deliberate indifference cannot be found unless an “official knows of and disregards an excessive risk to inmate health or safety.”<sup>36</sup> This means that prison conditions violate the Eighth Amendment when prisoners face a substantial risk of serious harm of which prison officials were aware and to which they did not adequately respond. Above, I argued that hypermasculine posturing and gang activity signal a failure on the part of prison administrators to ensure the personal safety and security of the people we have locked away—a failure of which prison officials, who surely recognize when such destructive and destabilizing self-help strategies dominate the internal prisoner culture in their facilities, must necessarily be aware. If I am right, the obvious presence of these pathologies clearly indicates that state officials (1) have failed to meet prisoners’ basic need for physical and psychological safety and (2) know they have done so, making this failure unconstitutional under governing law.

Constitutional rights, however, are not self-executing. They require some individual or group to mount a constitutional challenge. They require the court to find a violation as a matter of law and to impose some effective remedy, whether an injunction against continued unconstitutional conduct on the part of the state or monetary damages sufficient to incentivize a change in official policy. And they require that the remedy imposed be effectively enforced. Navigating this multistep process to a successful end is a tall order even for well-resourced plaintiffs. In the case of prisoners, the obstacles to meaningful judicial enforcement of their constitutional rights are often insurmountable. To start with, to get a hearing on the merits, people in prison must navigate

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35. Cf. Jeffrie G. Murphy, “Retribution,” in the present Volume.

36. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). This holding makes deliberate indifference a synonym for the culpable mental state of criminal recklessness.

a veritable procedural thicket. Among other things, procedural hurdles can include onerous time limits, strict exhaustion requirements, and complex rules concerning when, how, and in what form claims must be filed.<sup>37</sup> Because there is no right to counsel for prison-conditions challenges and because most people in prison are indigent, those prisoners seeking to raise constitutional claims in federal courts largely do so without the help of a lawyer. To make matters worse, people trying to litigate constitutional claims from inside a jail or prison will confront innumerable structural obstacles, including those of inadequate law libraries and insufficient legal assistance if they need help with their claims. And most prisoners do need such help, whether because they are illiterate, non-native English speakers, mentally ill, or simply among the more than 96% of American prisoners who are unable to “integrate, interpret, or synthesize” information from complex or lengthy documents, draw complex inferences, or assimilate competing information—all of which, as any law student will attest, are capacities integral to constructing a sound legal argument.<sup>38</sup> Collectively, these obstacles mean that even prisoner suits raising valid constitutional claims will often be lost well before a hearing on the merits.

Other structural features of prison-conditions challenges also tell against meaningful judicial enforcement of prisoners’ Eighth Amendment rights. Court-ordered systemic reforms typically arise from class-wide macro-level challenges to the functioning of an individual facility or the state system as a whole. But these cases are especially hard to bring. They are costly and can demand extensive fact-finding, not to mention familiarity with the complicated rules governing such actions. And even when systemic challenges yield a finding of unconstitutionality, they generally require ongoing attention to ensure continued compliance with the court order. Individual prisoners, who typically

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37. Many of these hurdles were established by the Prison Litigation Reform Act (PLRA), passed by Congress in 1996. If the judicial process is to fairly entertain prisoner’s constitutional claims, several aspects of that legislation must be reformed, including its strict exhaustion requirement and the attorneys’ fees provisions that dramatically disincentivize lawyers from representing even those prisoners with strongly meritorious constitutional claims.

38. INST. OF EDUC. SCIS., U.S. DEP’T OF EDUC., HIGHLIGHTS FROM THE U.S. PIAAC SURVEY OF INCARCERATED ADULTS: THEIR SKILLS, WORK EXPERIENCE, EDUCATION, AND TRAINING at B-3 (2016), <https://nces.ed.gov/pubs2016/2016040.pdf>; PIAAC 2012/2014 Results, INST. OF EDUC. SCI., <https://nces.ed.gov/surveys/piaac/results/makeselections.aspx> (last visited June 7, 2017) (follow “Make Selections” hyperlink; then under “Select Sample” follow “Prison 18-74” hyperlink; then under “Results” select “Proficiency Level” hyperlink). To be sure, only 13% of all Americans ages 16–74 have this level of literacy. See *id.* But then, we as a society have not generally made the basic health and safety of most Americans contingent on their ability to navigate a complex maze of statutes, regulations, procedures, and judicial opinions.

lack resources, specialized legal knowledge, and the ability to gather evidence, demand discovery, or enforce court orders are virtually always incapable of navigating this process to successful completion.<sup>39</sup>

Even apart from these hurdles, constitutional enforcement through the courts is a decidedly non-ideal mechanism for motivating far-reaching change.<sup>40</sup> Judges can only decide individual cases and are greatly limited in the sorts of system-wide remedies they are able to impose, even for claims arising from macro-level dysfunction. This piecemeal approach largely puts effective broad-based systemic reform beyond the power of the courts. And even when prisoners win their cases, the inherently adversarial nature of the judicial process means that prison officials often resist putting court-ordered reforms into effect. As a result, resources that could be more productively directed to identifying and implementing meaningful system-wide change are too often expended in an ongoing game of cat and mouse, as prisoners' advocates seek to force prison administrators to comply with court orders and prison officials try to avoid doing so.

This is not to say that prisoners' rights litigation does not represent a vital channel for ensuring the protection and well-being of people in prison. In the current regulatory environment, courts are indispensable; they allow for the prospect of vindicating individual constitutional rights and play a key role in the collective push to make prisons constitutionally compliant and thus safer and more humane. If, however, the aim is to substantially transform the prison environment, policymaking on the front end will necessarily be a far more efficient and potentially effective channel than back-end judicial review.<sup>41</sup>

The question then becomes: Who makes front-end prison policy? The answer is more complicated than might at first be thought. Every state has its own prison system, as does the federal government. In each jurisdiction, prisons are part of the executive branch. State prisons are operated by the state Department of Corrections (DOC), which has authority over them. State DOCs—and, in the case of the federal system, the U.S. Bureau of Prisons (BOP)—are responsible for crafting and promulgating the policies to govern their facilities. In addition, each individual facility has its own chain of

39. There are many dedicated prisoners' rights lawyers across the country who do bring class actions on behalf of prisoners. However, their number is still only a small fraction of what would be required if class-action lawsuits were to effectuate comprehensive reform of prison conditions nationwide.

40. Cf. Rachel A. Harmon, "Legal Remedies for Police Misconduct," in Volume 2 of the present Report.

41. See, e.g., Maria Ponomarenko & Barry Friedman, "Democratic Accountability and Policing," in Volume 2 of the present Report.

command: its own warden, assistant warden, and other command staff. This localized leadership team, with the warden at its head, also has considerable scope to implement policies for their particular institutions. In the most basic sense, therefore, every institution is governed by policy directly dictated both by the DOC and by the warden's office.

But prison regulation is further complicated in two ways. First, although legislatures for the most part stay out of the business of prison regulation, they retain the power to dictate prison policy when they see fit. Second, the enormous discretion accorded to those officials actually running the prison day to day, and especially the line officers who are in regular contact with prisoners, means there can be a great disconnect between the particulars of governing laws or regulations and the way official power is actually exercised on the ground.

Direct, front-end prison policy is thus created at four distinct levels: by the agency charged with crafting such policies; by the warden and his or her leadership team in each individual facility; by legislators, who retain the power to determine internal prison practices; and by line officers, whose direct and immediate interaction with people in custody gives them the power to determine to a large degree the quality of an individual prisoner's experience, regardless of the finer points of the operative policy or law. And perhaps with the exception of individual line officers, who exercise considerable discretion on the ground but whose conduct as a formal matter is dictated by policy directives from higher up the chain of command, all these actors have the legal authority to determine how the prisons will be run—to propose, mandate, and pursue new approaches. This complicated environment means that prison regulation is generally a patchwork, varying widely among facilities. Among other regulatory challenges thereby created, this situation often forces advocates to challenge troubling practices one prison at a time. But it also means that there are many possible points of entry for ideas as to how to do things differently.

For simplicity's sake, the discussion to follow is addressed to prison officials, a term that could encompass either policymakers at the relevant state agency or any officer—whether in an administrative role or working the line—who is authorized or empowered to dictate policy in a given prison. In addition, as noted, it is open to legislatures to pass laws directing prison officials to adopt certain practices by statute, which means that legislators are also among this chapter's intended audience.

Strategies are available that would substantially improve the conditions of confinement in American prisons. In what follows, I identify some of them. In Part V.A, I flag the macro-level changes without which broad and lasting change will be impossible—and highlight several significant obstacles to their achievement. I then turn to the more localized strategies that may be readily pursued right now, the implementation of which would make an appreciable difference to prisoners' day-to-day experience. The prescription I offer is simple: safety without isolation and meaningful opportunities for personal growth and self-development. If we want people to grow and change in prison, which we say we do, then we have to create the conditions in which growth and change are conceivable. This means doing everything possible to ensure that people in custody need not feel afraid, and also requires offering channels through which they can engage in self-reflection, cultivate a sense of purpose, and reorient their energies and efforts away from the pathologies of hypermasculine performance and gang activity and toward pursuits that are pro-social, healthy, and productive.

## V. MAKING PRISONS SAFER: A PRACTICAL GUIDE

### A. OVERCROWDING AND THE NON-NEGOTIABLE NEED FOR WHOLESALE STRUCTURAL CHANGE

The serious threat to prisoners' physical and psychological health and well-being posed by existing prison conditions is no secret.<sup>42</sup> Nor is it a mystery as to what it would take to meaningfully change this situation. Short of entirely rethinking the nation's approach to criminal punishment, to appreciably transform conditions in American prisons would at a minimum require:

1. A dramatic reduction in the number of people in custody.
2. Substantially increased staffing.
3. Significant investment in developing and operating effective systems for delivering medical and mental-health care to prisoners.

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42. One study found that “[w]hen Americans think about someone they know being incarcerated, the vast majority, 84 percent, say they would be concerned about the person’s physical safety. And 76 percent say they would be concerned about the person’s health.” JOHN J. GIBBONS & NICHOLAS DE B. KATZENBACH, VERA INST. OF JUST., *CONFRONTING CONFINEMENT: A REPORT OF THE COMMISSION ON SAFETY AND ABUSE IN AMERICA’S PRISONS* 29 (2006), [http://www.prisoncommission.org/pdfs/Confronting\\_Confinement.pdf](http://www.prisoncommission.org/pdfs/Confronting_Confinement.pdf) (citing a “[s]urvey in March and April of 2006 by Princeton Survey Research Associates International for the National Center for State Courts and the Commission on Safety and Abuse in America’s Prisons”).

4. A breaking down of the “us” versus “them” dynamic that tends to exist between custodial staff and the incarcerated.

Of all these necessary changes, the most immediately crucial is to reduce the enormous number of people behind bars. As already noted, overcrowding inherently increases stress levels in prison and automatically complicates any efforts to reduce violence and keep people safe. Indeed, good prison management can be stymied without open bed space, since excess capacity allows for the immediate transfer of individual prisoners when needed to prevent violence or quell unrest. Overcrowding eliminates extra beds, and overcrowded facilities perpetually operate above their design capacity. To take one notable example, before the Supreme Court order in *Brown v. Plata*<sup>43</sup> required California to reduce the population density of its prisons, the average facility in the state was running at more than 200% capacity,<sup>44</sup> with 11 prisons exceeding 214% capacity<sup>45</sup> and one facility operating at almost 260% capacity.<sup>46</sup> When facilities are this crowded, people wind up sleeping in hallways and program spaces like gymnasiums and chapels on an effectively permanent basis.<sup>47</sup> Under such conditions, no facility can properly ensure the safety of its prisoners or staff.<sup>48</sup> And, it bears noting, until prison staff feel safe on the job, staffing shortages will continue to plague prisons nationwide. Staff vacancies are a perennial problem in carceral facilities. In most cases, however, the reason these vacancies persist is not a lack of qualified people or low pay, but because overcrowded prisons, filled with people who are themselves scared, stressed, and angry, are invariably experienced by employees as scary, stressful, and traumatizing places to work.

If a reduction in crowding is paramount, each of the prescriptions listed above must also be met if our prisons are ever to be meaningfully safe and

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43. *Brown v. Plata*, 563 U.S. 493 (2011) (upholding the three-judge panel order issued in *Coleman v. Schwarzenegger*, Nos. CIV S-90-0520 LKK JFM P, C01-1351 TEH, 2010 WL 99000 (E.D. & N.D. Cal. Jan. 12, 2010)).

44. See CAL. DEP'T OF CORR. & REHAB., MONTHLY REPORT OF POPULATION AS OF MIDNIGHT SEPTEMBER 30, 2007 (2007) (reporting an occupancy rate in the state's prisons of 203.7% of design capacity overall and 207.5% for women's facilities).

45. See *id.*

46. See *id.* (reporting that Avenal State Prison, with a design capacity of 2926, was housing 7592 prisoners, for occupancy rate of 259.7%).

47. During a recent tour of L.A. County's Century Regional Detention Facility (CRDF), the deputy leading the tour referred casually to “day-room sleepers,” a term that proved to refer to the people “housed” in triple bunks placed around the perimeter of the day rooms. Each 100-person unit had roughly 20-30 people so classified, who between them shared the single bathroom intended to serve people in the unit when they were out of their cells.

48. Indeed, when facilities are this crowded, COs struggle to provide even for prisoners' most basic daily needs—meals, meds, showers, etc.

humane for those inside. Insufficient staffing necessarily translates into reduced protection and increased harm. A facility that does not deliver adequate medical and mental-health care will routinely inflict gratuitous pain and suffering on people in custody (not to mention guarantee the export of potentially harmful conditions—including communicable diseases and untreated mental illness—to society at large as people are released). And given the vast discretion afforded to COs in the exercise of their authority, a persistent culture of hostility between COs and prisoners will often lead to the gratuitous humiliation and harm of prisoners by the very people charged with keeping them safe.

None of these goals will be easy to achieve. To the contrary, each will require a heavy lift: a considerable investment of resources, the political will to make hard choices, and a commitment to dramatically reorienting a carceral culture currently disposed to view people in custody as dangerous, untrustworthy, and something less than human. Among other things, seriously tackling these challenges would require a wholesale rejection of the philosophy of penal harm.

The question of how to bring about this ideological shift is well beyond the scope of this chapter. But even if we cannot in short order transform public perceptions—and even absent broader systemic changes along the lines just sketched—there are still things that may be done to help to reduce violence and fear and thus to contain some of the most dehumanizing aspects of modern prison life. Certainly, prisons are complex institutions that vary widely, and what works in one context may not work in another. There are, however, some strategies that seem likely to reduce violence in the prison and thus decrease the overall level of psychic distress that plagues people in prison when—and because—they are afraid.

## *B. NO NEED TO WAIT: SEVEN STRATEGIES FOR MAKING PRISONS SAFER RIGHT NOW*

### 1. Classification and monitoring

To begin with, there are several population-management strategies that deploy classification and ongoing monitoring to reduce contact between those people who are vulnerable to physical or sexual abuse in prison and those who are likely predators. Although perhaps counterintuitive, prison officials often respond to reports of victimization by removing the victim from the situation. In most cases, this means transferring the victim from GP to “protective custody” (a.k.a. solitary confinement). This strategy has several predictable effects. First, it disincentivizes prisoners who have experienced abuse from reporting the matter to COs, since they may prefer living with the fear of a

repeated assault to the deep psychic harm of extended social isolation. Second, it assures predatory prisoners that they will pay no price for abusing others. To the contrary, this response places the heaviest burden on those who are victimized, while allowing perpetrators to continue on as before. Officials committed to safer prisons should flip this script. Rather than waiting for reports of abuse from prisoners who have been victimized—who, even apart from the disincentive of protective custody, generally face great pressure not to “snitch”—prison officials should make it a standard practice to monitor units in an ongoing way to identify emergent predators and automatically remove predatory individuals as soon as they become known.

**RECOMMENDATION: Monitor housing units in an ongoing way to identify emergent predators, and automatically remove predatory individuals as soon as they become known.**

Ideally, for reasons already explored,<sup>49</sup> officials would not respond by transferring those predatory prisoners removed from GP to solitary confinement. The difficulty is that the obvious alternative—simply relocating them to a different GP dorm—could well expose other vulnerable prisoners in GP to the threat of predation. One possible fix is to pursue policies designed to predispose individual prisoners to choose of their own accord to leave off victimizing others. I suggest policies of this sort in Part V.C. At a minimum, however, to reduce the possibility of victimization throughout their facilities, prison officials should be more proactive from the outset in adopting policies designed to identify and separate out likely victims from likely predators for housing purposes, both when people arrive in the facility and regularly thereafter. Officials should also maintain a strict boundary between likely victims and likely predators in all areas of the prison, including but not limited to housing units.

**RECOMMENDATION: Adopt policies designed to identify and separate likely victims from likely predators for housing purposes, both when people arrive in the facility and regularly thereafter.**

**RECOMMENDATION: Maintain a strict boundary between likely victims and likely predators in all areas of the prison, including but not limited to housing units.**

This approach is consistent with the requirements of the *National Standards to Prevent, Deter and Respond to Prison Rape*, officially adopted by the United States Department of Justice in May 2012 pursuant to the Prison Rape

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49. See *supra* notes 14–16 and accompanying text.

Elimination Act (PREA).<sup>50</sup> These standards require that “[a]ll inmates [should] be assessed during intake and upon transfer to another facility for their risk of being sexually abused by other inmates or sexually abusive toward other inmates, ... with the goal of keeping separate those at a high risk of being sexually victimized from those [likely to be] sexually abusive.”<sup>51</sup> They also provide a list of criteria prison officials can use to identify people who are potentially at risk. These include whether “the inmate has a mental, physical, or developmental disability,” “has previously been incarcerated,” “has prior convictions for sex offenses,” “is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming,” or “has previously experienced sexual victimization.”<sup>52</sup> As written, this regulation is directed exclusively at identifying likely victims of sexual abuse in custody. But its list of criteria are as good a guide as any for identifying likely victims of nonsexual physical abuse as well. All carceral facilities are required to abide by the 2012 PREA standards, which means that prison officials should already be implementing policies for assessing all individuals for likely vulnerability both on intake and pursuant to any transfer. But prison officials should go further and commit to using these criteria to guide ongoing monitoring of housing units with the aim of staying on top of shifting dynamics in existing populations.

Viewing classification as an ongoing process is especially important given that the initial intake process may not always be an effective mechanism for accurately determining a person’s risk of being victimized. In at least one major metropolitan jail with which I am familiar, intake is typically accomplished in short order by officers who sit behind glass staring at computer screens without any meaningful sightlines to the people being classified. A person’s security level—which determines their housing assignments—is thus made by someone unable to assess physical size or robustness, much less disability or prior experience of victimization (to name just two considerations identified in the PREA standards as relevant for determining vulnerability to abuse). And even adequate intake procedures will not tell the whole story as to an individual’s risk of being victimized. For example, a person who may not have seemed vulnerable on intake by virtue of their physical size may still find themselves at a relative disadvantage compared to others in the housing unit to which they are assigned.

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50. Prison Rape Elimination Act National Standards, 28 C.F.R. § 115 (2012).

51. Screening for Risk of Victimization and Abusiveness, 28 C.F.R. §§ 115.41(a), 115.42(a) (2017). PREA was passed by Congress in 2003. *See* Prison Rape Elimination Act of 2003, 42 U.S.C. § 15601 (2012).

52. Use of Screening Information, 28 C.F.R. § 115.41(d)(1)-(10) (2017).

In short, risk assessment for purposes of separating likely victims from likely assailants cannot be restricted to intake or transfer and must instead be regarded as an ongoing, dynamic process that plays out over the whole course of a person's prison term. And the process itself must be sufficiently intensive to determine the safest housing placement for each individual. This sort of in-depth process is already being implemented in the San Francisco County Jail system, where classification officers can spend up to 45 minutes interviewing each new admit, to determine not only whether he might be vulnerable or predatory but also his relative strength and where he is likely to fall in the pecking order of the unit to which he is assigned. For instance, might he emerge as a victim in a standard GP unit? As a predator in a unit of vulnerable inmates? San Francisco County has an annual admission rate of between 30,000 and 37,000 people. This number is considerably higher than many state prison systems. If a jail system that size can pursue this approach to classification, it ought also to be feasible in many prisons and many other jails nationwide.

## 2. Communication and mutual trust between prisoners and staff

Equally important, correctional officers must have the opportunity to get to know personally the individuals in the units they oversee, and thus to come to see them as people and not merely as stereotypes. Absent familiarity and shared understanding at a human level, trust and mutual respect will be impossible to cultivate—and so, in turn, will any meaningful channels of communication. Without trust, people in custody will be unwilling to share information with officers about the threats they personally face. And without this information, even COs of goodwill cannot take the steps necessary to keep prisoners safe.

How to foster mutual trust and respect between COs and those in custody? One obvious first step would be to ensure continuity of staffing as much as possible, to allow staff to get to know the people in their custody as individuals.

**RECOMMENDATION: Ensure continuity of staffing as much as possible, to allow staff to get to know the people in their custody as individuals, not merely as stereotypes.**

In my own research inside L.A. County's Men's Central Jail, I saw firsthand the positive effect continuity of staffing can have on CO-prisoner relations. The unit I studied, known internally as K6G, was a segregation unit with an unusually high recidivism rate,<sup>53</sup> which meant that, although it was jail and not prison, people cumulatively were doing enough time to come to know

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53. The K6G unit houses all gay men and trans women in the Jail. For more on this unit, see Dolovich, *Strategic Segregation*, *supra* note 12; and Dolovich, *Two Models*, *supra* note 12.

and be known to the officers. On the staff side, the two officers in charge of K6G classification had between them spent more than 35 years assigned to the unit. These officers, Senior Deputy Randy Bell and Deputy Bart Lanni, interviewed at some length every new person sent to the unit, and personally reconnected, if only briefly, with everyone who had been there before and had turned up again. Over time, this practice enabled Bell and Lanni to get to know personally every person in the unit—and every detainee was able to form their own personalized assessment of the two officers. Admittedly, this pair of deputies, who have since retired, were unusual in the extent to which they treated prisoners with evenhandedness and respect. But the notable bonds of trust and consequent channel of communication that existed between them and the people in their custody—a channel that was frequently used by unit residents to convey information about conflicts in the dorms—could only have arisen in the first place because Bell and Lanni stayed put.<sup>54</sup>

The more usual practice in many facilities is to regularly rotate staffing assignments. The typical reason offered is the need to minimize opportunities for fraternization with prisoners, which can lead to corruption. But there are more effective ways to reduce corruption among COs—approaches that would not also disrupt opportunities for the development of mutual acquaintance between prisoners and staff. The process of “turning” COs very often begins with prisoners enlisting friendly staff to bring contraband into the facility. Having done so once, staff become ripe for blackmail and/or primed for the lure of large payouts for additional deliveries and provision of other services. Prison officials serious about stopping this process before it starts should thus implement policies designed to block COs from bringing unauthorized articles into the prison.

**RECOMMENDATION: Implement—and rigorously enforce—policies designed to block COs from bringing unauthorized articles into the prison.**

To begin with, as a matter of course, prison administrators should require all uniformed officers and other staff—without exception—to pass through metal detectors on entering the facility, and should take all possible steps to prevent collusion among officers either to circumvent this requirement or to shield those found with contraband from any negative repercussions. Administrators should also implement a policy of random on-site searches of COs’ lockers, bags, and

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54. For extended discussion of the process by which trust, communication and mutual respect developed between these two officers and the residents of K6G, see Dolovich, *Two Models*, *supra* note 12, at 1036–46.

clothing; commit to prosecuting to the fullest extent of the law any COs caught smuggling contraband into the prison (and follow through on this commitment); and otherwise make clear that any such smuggling will not be tolerated.

Taking such steps would generate several positive benefits for the prison environment. First, as noted, doing so would help to diffuse the risk of corrupting fraternization without also foreclosing the development of mutual recognition and understanding between staff and prisoners that may arise with the opportunity to get to know one another over time. Second, these moves would substantially reduce the flow of contraband into the prisons; it is an open secret that prison staff often serve as a major conduit for items like cell phones and drugs. Third and finally, of particular relevance to the theme of this chapter, both reducing the presence of contraband and preventing staff from introducing it into the prison would greatly enhance prisoner safety. This is so for several reasons. Most obviously, the presence and trade of contraband inside a prison directly compromises a facility's good order and stability. A flourishing black market equates to power and control for those individuals most connected to its operation, who are invariably among the most fear-inducing elements in a facility. It carries a strong risk of violence among prisoners, as dealers punish unpaid debts and as various internal factions vie for dominance over distribution and sales. And perhaps especially concerning, when staff traffic in contraband, their loyalties shift to the prisoners with whom they deal. The first and only obligation of a correctional officer is to do what is required to ensure a safe and orderly institutional environment for those who live and work inside. Not only are COs who are in league with a prison's black marketeers at constant risk of violating that duty, but in the worst cases, they may actually use their official authority to promote and assist the internal criminal enterprise, thereby affirmatively undermining the prison's security and good order and putting lives at risk.

What is needed are mechanisms for above-board, pro-social interpersonal interaction between staff and prisoners. Certainly, even assuming opportunities for this sort of contact, it will not be easy for prisoners and prison officials to develop bonds of trust; many men in custody have learned from experience to view COs as antagonists, not allies.<sup>55</sup> Overcoming long-standing barriers will take hard work and a concerted effort to dismantle the cultural obstacles

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55. To take one unfortunate example that helps to explain this lack of trust, prisoners at risk of rape who seek protection from correctional officers will at times report being advised to "fight or fuck"—that is, to fight their aggressors or suffer the consequences. See James E. Robertson, "Fight or F..." and *Constitutional Liberty: An Inmate's Right To Self-Defense When Targeted By Aggressors*, 29 IND. L. REV. 339 (1995).

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that too often keep COs from regarding people in prison as human beings deserving of respect (and vice versa). But hard as it may be to achieve, prison officials must do all they can to foster a culture of respect toward people in custody as a way of, among other things, building trust, creating channels of communication between staff and prisoners, enabling staff to identify threats and resolve problems when they arise, and helping to counter the demeaning effects of incarceration.<sup>56</sup>

Given the internal staff cultures of many prison environments today, this is admittedly a tall order. But prison administrators need not await wholesale transformation to begin exercising leadership in this regard. Some obvious practices prison officials could adopt without delay to help build a culture of respect in their facilities include modeling and insisting on mutually respectful behavior, taking prisoners' grievances seriously, demonstrating a commitment to rooting out facts rather than taking line officers' assertions at face value, and implementing a zero-tolerance policy for gratuitous humiliation and abuse of prisoners by staff. To be sure, there may be resistance from staff who are uninterested in this sort of cultural shift. Leadership in this area may thus also demand the making of hard decisions as to which staff to retain and promote, and how to handle those who refuse to modify their approach.

**RECOMMENDATION: Exercise leadership to foster an official culture of respect toward people in custody.**

Any pushback by prison staff against efforts to change a prison's culture in these ways will invariably be framed in terms of security; it will be said that, unless prisoners may be regularly made to understand who holds the power in the facility, COs will be unable to exercise control over them and thus unable to contain the violence and disorder sure to ensue. But this formulation has it exactly backward. It is the climate of dehumanization and disrespect of prisoners by staff that feeds the violence and disorder. How so? For one thing, COs who refuse to treat prisoners as human beings deserving of respect are COs who will not take the necessary steps to identify and respond to threats

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56. Transforming the internal culture of the prison along these lines is a considerable challenge. It is not, however, impossible; even now, there are prisoners' advocates working with prison officials around the country to shift the attitudes COs bring to the job and their perceptions of the people in their custody.

to prisoners' safety.<sup>57</sup> Moreover, in an environment governed by an imperative of hypermasculinity, any displays of disrespect, from any source, can be toxic. This latter effect should be obvious from the urgency and immediacy with which many men in prison police displays of "disrespect" and respond to all perceived slights, however minor, with unhesitating aggression. Again, this textbook aspect of hypermasculine performance is best understood as a defensive strategy against the ever-present threat of being "dissed" and thereby revealed to be weak and therefore a "punk"—i.e., someone to be derided, humiliated, and targeted for abuse by fellow prisoners. Under these circumstances, staying safe means meeting disrespect, whatever the source, with overt shows of ready pugnacity. And when the primary source of safety lies in hypermasculine performance, disrespect from staff can be as provocative as disrespect from fellow prisoners.

In such an environment, the best thing officers can do to ease the tension and minimize the threat of disorder is to treat prisoners with as much respect and consideration as possible. There will inevitably be some subset of the prisoner population who will persist in disruption and violent behavior regardless of how they are treated. That is the nature of prison. But even in such cases, the situation will always be less volatile if officers respond as calmly and respectfully as possible. And in most cases, people in custody will repay genuinely respectful treatment in kind. The effect of this virtuous circle would be a safer and less stressful environment for everyone, staff included.

When considering staff-prisoner dynamics, there is a further troubling fact that must be faced: hypermasculine posturing is not the sole purview of prisoners. Staff too—especially young male officers—can also be prone to performing hypermasculinity, complete with belligerence, a hair-trigger temper, and a readiness to resolve conflict with violence. Here as well this conduct is best understood as a strategy of self-protection, often adopted by new COs with limited experience, who may be afraid and feel unsafe at work. Such fear is understandable. COs have a tough and even dangerous job. They are often far outnumbered by prisoners and operate in an environment defined by resentment and mutual distrust, in which, badge and uniform notwithstanding, even COs cannot be fully confident in the institution's ability to keep them safe. Especially for those staff members with little experience navigating this world,

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57. An extreme example of this dynamic is found in Kenneth E. Hartman's prison memoir, *Mother California*. He reports that, on his arrival at Folsom State Prison in the early 1980s, he and the other new arrivals were met by a prison official who offered two "admonitions": "If you try to escape, we'll kill you. If you put your hands on one of my guards, we'll kill you. Other than that, we don't give a shit what you do to each other." According to Hartman, "[n]o more accurate description of Folsom [wa]s ever offered." KENNETH E. HARTMAN, *MOTHER CALIFORNIA: A STORY OF REDEMPTION BEHIND BARS* 35 (2009).

fear is an entirely natural reaction. And as with many prisoners, some COs find that the best way to manage their fear—and to prevent being “punked,” an anxiety COs often share with prisoners, though they may use a different label<sup>58</sup>—is to act as hard and tough as possible. In some cases, especially when the CO in question is new to the job, prisoners will endure instances of arbitrary abuse or displays of power with tolerance and forbearance, seeing it for what it is: the conduct of someone who is trying to manage his fear and inexperience. But on the whole, hypermasculine performance on the part of COs only exacerbates tensions and resentments within the facility. A prison system committed to a climate of respect toward the people in custody should thus root out and refuse to tolerate gratuitous hypermasculine posturing on the part of staff.

**RECOMMENDATION: Condemn and root out any and all hypermasculine posturing on the part of staff.**

*C. HARNESSING THE POWER OF SELF-RESPECT: TWO INDIRECT STRATEGIES FOR MAKING PRISONS SAFER AND MORE HUMANE*

To this point, the recommendations I have offered have focused largely on strategies of institutional design, ways of managing a prison’s population and shaping its official culture to curtail the practices likely to aggravate tensions and foster fear. As a first cut, this focus is entirely appropriate: As I have been arguing, we cannot expect men in prison to leave off hypermasculine posturing and gang activity unless they can be confident in their ongoing safety. And without the policy changes proposed thus far, it will be difficult for any institution to meaningfully shift its institutional dynamics in the direction of greater safety. All this, of course, comes with a crucial caveat: Without a significant reduction in overcrowding, there will be a hard upper limit on just how safe and humane any carceral facility can be. Still, the strategies offered thus far represent steps that are currently available to prison officials committed to making their facilities as safe and humane as possible despite existing population pressures.

There remains, however, a further pair of promising strategies that, if pursued in conjunction with the recommendations sketched above, could leverage an increased sense of safety to help put those individuals open to self-development

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58. Prison staff are often on their guard against being “manipulated,” “played,” or “conned” by prisoners. To some extent, this stance is appropriate in an environment where prisoners will often try to get what they can from unwary employees. But the heightened sensitivity to this possibility with which officers will often approach interactions with prisoners suggests that more is at stake for COs in this regard than simply wanting to enforce the rules.

on a path to meaningful growth and change. These strategies directly engage that collection of policies and practices often styled as “rehabilitative,” but which are perhaps more appropriately characterized as *humanizing*.

In this chapter, I have repeatedly maintained that fear is inconsistent with the sort of self-reflection and self-development necessary for meaningful personal growth. What also bears emphasis is that people who are given the opportunity to grow and develop as moral actors will be much less inclined to engage in the pathological behaviors that undermine efforts to keep violence to a minimum. There is, in other words, the potential here for a powerful virtuous circle, one that policymakers serious about making prisons safer and more humane ought to do all they can to trigger.

There are many possible ways to characterize the mechanisms by which opportunities for personal growth and self-development can enhance the safety of carceral facilities. I would frame it in terms of respect—specifically, the positive, mutually reinforcing effects of individual self-respect and respect for others. It is only when people feel themselves to be treated with respect that they are able to cultivate feelings of self-worth and self-regard. These particular feelings are rare commodities among people in prison, since the experience of incarceration so often carries with it feelings of shame, humiliation, and self-loathing. Society has a strong interest in helping people overcome these destructive feelings, for a very simple reason: People who hate themselves, who lack a sense of self-worth, will be hard-pressed to regard others as deserving of respect, much less treat them that way. Yet if individuals can once be brought to view themselves in a more positive light, as worthy and contributing members of society, it becomes possible for them to discover and nourish in themselves the capacity to recognize and affirm and respect the humanity of those around them.<sup>59</sup> And once this happens, the desire to engage in productive pursuits and to leave others alone to do the same—or even to collaborate with others to create positive change—will inevitably follow.

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59. There may well be some few people in prison who, regardless of how they are treated, will never be capable of recognizing and respecting the humanity of others, whether because they have been so brutalized by past experience that they are beyond meaningful human connection or because they are sociopaths, born lacking the basic capacity for empathy or mutual concern. But if so, they make up an extremely small portion of the more than 2.2 million people currently behind bars in the United States. Cf. Dolovich, *supra* note 27, at 300 (“Unless the disposition of dangerous violent predator is epidemic in American society—a possibility arguably disproved by common sense and by the relatively few serial murders, rapes, and other extremely violent actions compared with the sheer number of convicted offenders—some other explanation is needed for the vast scope of the carceral system.”).

Evidence of this positive feedback loop can be seen in the success of dedicated veterans' units that have arisen in prisons and jails around the country. These units, in place in Florida, California, Illinois, and elsewhere, house men who served in the military prior to their incarceration.<sup>60</sup> For many people in this group, their military service is the period in their lives of which they are most proud. By highlighting their veteran status and making it the basis of their housing assignments, the prison is officially acknowledging their sacrifice and social contribution, and affirming their identity as something other than convicted offender and prisoner. This official validation seems in turn to enable a sense of community, shared identity, and even solidarity among residents, and thus to promote mutual tolerance and respect instead of hostility and friction. Notably, residents of such units report that they feel no need to be constantly on their guard against one another and in fact attest to a sense of community that fosters positive mutual engagement and cooperation.<sup>61</sup>

The example of veterans' units demonstrates the way distinct strategies for promoting safety can be mutually reinforcing. In these units, not only are prisoners able to develop respect for one another, but the approach offers a direct channel for positive interactions with COs, since the officers assigned to these units are often military veterans themselves. This common formative experience seems to allow staff and prisoners a way to transcend the standard "us" versus "them" dynamic that too often prevails in custody. The resulting mutual accord enhances residents' sense of safety and further reduces the need for engaging in ultimately destabilizing strategies of self-help.

The example of veterans' units suggests that prison officials should consider carving off groups of people whose common identities or interests might provide a basis for mutual affinity and understanding, and housing them together apart from GP.<sup>62</sup>

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60. See Lizette Alvarez, *In Florida, Using Military Discipline to Help Veterans in Prison*, N.Y. TIMES, Dec. 12, 2011, at A14. I know of no analogous units in women's facilities. This is likely because the vast majority of veterans in prison are men. See JENNIFER BRONSON ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, VETERANS IN PRISON AND JAIL 2011–12, at 4 tbl. 3 (2015) (reporting that of the 131,500 veterans in prison in 2011–2012, 130,100 were male (98.9%)); see also *id.* (reporting that of the 50,000 veterans in jail during the same years, 48,400 or 96.8% were male).

61. Alvarez quotes to this effect one man in Florida's veterans' unit, "who served as a sergeant and a machinist in the Army for 20 years" and "wound up in prison in 2002 after he killed three people in a trucking crash." As he put it, "[t]here is no more stress in here .... Generally, we all get along very well. We help each other out .... There is honesty, responsibility. It's like you have teamwork." Alvarez, *supra* note 60.

62. For a detailed study in one such affinity-based unit—the L.A. County Jail's K6G unit, which exclusively houses gay men and trans women—see Dolovich, *Strategic Segregation*, *supra* note 12; and Dolovich, *Two Models*, *supra* note 12.

**RECOMMENDATION: Consider carving off groups of people whose common identities or interests might provide a basis for mutual affinity and understanding, and housing them together apart from GP.**

Another possible candidate group for this approach is men who are committed fathers to their children or who wish to be. Not only is the identity of “father” humanizing in itself, but it could also provide the basis for healthier and more respectful interactions among men who know themselves to share a common motivation and a crucial life experience. Such a unit might also benefit from being staffed by officers who are themselves devoted fathers. As an added advantage, bringing together such men would also facilitate programming oriented toward enhancing parenting skills and family connections more generally.

Equally promising and with the potential for much broader reach are programming dorms of a more general sort, housing people with a demonstrated commitment to educational or other pro-social pursuits (scholastic, artistic, vocational, etc.). This experience would not only enable residents to build new skills but could also promote feelings of individual self-worth and mutually respectful interactions between unit residents. Such dorms already exist in many facilities, often operating as “honor” units, in which people motivated by pro-social and personally meaningful projects are recognized and affirmed as such by the institution. Their success suggests that prison officials ought to consider self-consciously expanding this approach to encompass other possible affinity groups.

To be sure, there are risks involved in taking this step.<sup>63</sup> For one thing, separating out from GP those groups of people most likely to help foster a healthy, pro-social environment—say, people of faith or people pursuing their education—may strip the general population of its potentially most positive influences. Furthermore, depending on the group tagged for separate housing, this strategy may raise all the concerns that attend any program of state-sponsored segregation.<sup>64</sup> For these and other reasons, prison officials might hesitate to rely too heavily on this pathway or to pursue it at all.

Fortunately, there is an alternative approach available to prison officials wishing to enable people in custody to engage in meaningful self-development and thereby foster a positive self-image—an approach that carries few,

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63. For extended discussion of these risks, see Dolovich, *Two Models*, *supra* note 12, at 1110–14; and Dolovich, *Strategic Segregation*, *supra* note 12, at 54–87.

64. Even a nonsectarian faith-based unit, for example, might reasonably raise valid fears of discrimination if, say, officers were inclined to favor those prisoners who shared their personal beliefs. It could also invite discrimination against nonbelievers, especially if, as anticipated, a unit for people of faith turned out to be comparatively safe and humane.

if any, risks and indeed has long been recognized to reduce the “pains of imprisonment”<sup>65</sup> and enhance post-custody success. I am speaking here of a commitment to providing as many individual prisoners as possible with programming opportunities that will allow them to cultivate a sense of purpose, to remain connected to who they are, and to learn and grow as people.<sup>66</sup>

**RECOMMENDATION: Provide as many individual prisoners as possible with access to pursuits that will enable meaningful self-development.**

Certainly, other pieces of the puzzle must also be in place; most obviously, people must feel safe enough to engage in activities that might otherwise mark them as targets. But once this background condition is met, there are enormous benefits to providing prisoners access to meaningful and challenging educational programs, programs in the arts (theater, music, creative writing, etc.), vocational training, or any other opportunities for self-development and for cultivating a healthy self-respect. Equally beneficial and humanizing are programs that would allow prisoners to maintain and develop meaningful connections with people in the free world, whether family, friends, or other people with common interests.<sup>67</sup> Not only would these pursuits help people to feel more human, but assuming broad enough reach, they are also likely to trigger a virtuous circle, making prisoners who benefit from these opportunities more inclined to treat others with respect and to reject the destructive behavioral norms often dominant in GP. From this vantage point, the value of helping everyone in custody to find meaningful pathways to personal growth and self-development—the essential precondition for real personal change—should be self-evident. All that remains is an official commitment to making such opportunities widely available to the people who are currently living behind bars.

## VI. RESPECT BEGETS RESPECT

American prisons and jails can never be truly safe places for staff or prisoners so long as they remain overcrowded. But policymakers committed to reducing the fear and trauma regularly experienced by people in custody need not await system-wide downsizing to improve conditions in their facilities. In this chapter, I have identified several steps that prison officials and other state actors with the authority to direct prison policy could take right away to increase the

65. GRESHAM M. SYKES, *THE SOCIETY OF CAPTIVES* 70–72 (1958).

66. See generally Francis T. Cullen, “Correctional Rehabilitation,” in the present Volume.

67. See CRAIG HANEY, *REFORMING PUNISHMENT: PSYCHOLOGICAL LIMITS TO THE PAINS OF IMPRISONMENT* 309 (2006) (“[P]rograms that involve prisoners in meaningful activity and reduce the psychological barriers between prison and the outside world—for example, ones that facilitate and encourage visitation and the maintenance of family ties—can actually change the prison environment in ways that reduce the harmful alienation that often occurs there.”).

personal safety of people in prison without resorting to social isolation. Taking these steps would help to reduce the tension, resentment, and fear that often define the prison experience, and thus ease the pressure on prisoners to adopt strategies of self-help that, if understandable, only compound the danger.

In addition, prison officials serious about making their facilities as safe and humane as possible should zealously promote opportunities that will allow people in prison to find a sense of purpose, to pursue positive and productive personal projects, and to grow and develop as people. The sense of self-worth that would result will not only reorient people in a healthy and pro-social direction—the self-conscious goal of “corrections”—but would also promote the capacity for mutual respect, thereby greatly reducing the appeal of antisocial behavior and setting people on a path to successful reentry.

Fear is corrosive of humanity. If we want the people we incarcerate to affirm the worth of others and to treat them with respect, we must ensure that they can live without fear while they are locked up. But this effect will never be achieved unless and until we as a society are prepared in turn to affirm the essential humanity of the people we incarcerate. This chain of imperatives reflects the tight interconnection between safety and humanity in the prison environment. People in prison cannot be expected to treat others with respect if they cannot feel safe enough to come outside themselves and recognize that other people also suffer when they are afraid. It is only once the fear recedes and people are able to reclaim the psychic space necessary to develop a sense of purpose and self-worth that they can come to recognize others as separate moral beings whose pain and aspirations are as real and as consequential as their own. And the same thing, it bears emphasizing, holds true for the rest of us; we will never fully commit to doing what it takes to ensure safe and humane prison conditions unless and until we are prepared to affirm that those we incarcerate also suffer when they are afraid and that their pain and aspirations are as real and as consequential as our own. For decades, American prison policy, driven by fear and the philosophy of penal harm, has made a virtue of inhumanity. It is past time to try the opposite approach, and to see what good might come of it.

### RECOMMENDATIONS

This chapter offers the following recommendations to prison officials committed to making their facilities as safe and humane as possible despite existing population pressures:

1. Monitor units in an ongoing way to identify emergent predators, and automatically remove predatory individuals as soon as they become known. Treat classification as an ongoing process rather than a one-time thing.
2. Identify and separate out likely victims from likely predators for housing purposes, both when people arrive in the facility and regularly thereafter.
3. Maintain a strict boundary between likely victims and likely predators in all areas of the prison, including but not limited to housing units. As prisoners know, abuse can happen anywhere in the facility, not just in the cell blocks or dorms.
4. Ensure continuity of staffing as much as possible, to allow staff to get to know the people in their custody as individuals and not merely as stereotypes. Personal acquaintance and understanding promotes mutual trust. Where there is trust, channels of communication may arise through which staff can come to know of threats to inmate safety and thus be in a position to address them.
5. Implement policies designed to block correctional officers from bringing unauthorized articles into the prison, and rigorously enforce those policies. Benefits will include a reduction in the contraband that can destabilize a facility and in the risk of corruption and criminality on the part of staff.
6. Exercise leadership to foster an official culture of respect toward people in custody. Some obvious practices prison officials could adopt to begin building this culture in their facilities include modeling and insisting on mutually respectful behavior, taking prisoners' grievances seriously, demonstrating a commitment to rooting out facts rather than taking line officers' assertions at face value, and implementing a zero-tolerance policy for gratuitous humiliation and abuse of prisoners by staff.
7. Condemn and refuse to tolerate gratuitous hypermasculine posturing on the part of staff.
8. Consider carving off groups of people whose common identities or interests might provide a basis for mutual affinity and understanding, and housing them together apart from the prison's general population.
9. Provide as many individual prisoners as possible with access to pursuits that allow for personal growth and self-development. Whatever the vehicle—education, employment, arts programming, vocational training, service opportunities, etc.—the key is to help people in prison cultivate a sense of purpose and self-worth and an identity other than “prisoner.”