

Inside the Pyramid of Disputes: Naming Problems and Filing Grievances in California Prisons

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Previous literature on disputing and legal mobilization suggests that stigmatized, self-blaming, and/or vulnerable populations often face insurmountable barriers to naming a situation as injurious and claiming redress. Contrary to what one would expect from this literature, prisoners in the United States—among the most stigmatized and vulnerable of populations—file tens of thousands of grievances annually. To explore this apparent paradox, we draw on an unprecedented data set comprised of interviews with a random sample of 120 men in three California prisons. Our data reveal that these prisoners are willing and able to name problems, and most of them have filed at least one grievance. While some expressed self-blame and most said there was retaliation for filing a grievance, the majority overcame these impediments to filing. We argue that the context of prison—a total institution in which law is a hypervisible force—enhances this form of legal mobilization by prisoners, trumping the social and psychological factors that the context otherwise produces and that in other populations tamp down claims making. The pattern of these prisoners’ claims, however, reveals that they are by no means immune to the countervailing pressures. While staff disrespect was named frequently as a problem in prison, grievances against staff were relatively rare. In concluding, we note that the U.S. Supreme Court recently found California prisons violate the Eighth Amendment’s ban on cruel and unusual punishment, a finding that reveals the inadequacy of the inmate appeals system despite prisoners’ repeated efforts to hold the state accountable. Keywords: prisons; inmate appeals; grievances; dispute resolution; legal mobilization.

“The COs [correctional officers] tend to think we’re not human. We’re not people, we’re just criminals.”
– California prisoner, interview, August 2009

“It’s about standing up for yourself and your rights. You know that sometimes you just gotta do that.”
– California prisoner, interview, July 2009

“They decide. You just complain.”
– California prisoner, interview, July 2009

In 2006, a California prisoner lodged a grievance with the state’s Department of Corrections and Rehabilitation (CDCR), citing temperatures of 114 degrees in the overcrowded concrete cells of his desert prison. The lack of ventilation was exacerbated by metal on the roof, he said, adding that even the prison dog kennels were air-conditioned. The same year, a bedridden paraplegic

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prisoner filed a grievance against the CDCR for the deficient care he was receiving, and attached photographs of the dozens of open bedsores on his back.

The administrative grievance system¹ is prisoners' main internal mechanism for contesting the conditions of their confinement, and federal law requires exhaustion of these procedures before filing a lawsuit. In California, the grievance process includes three levels of formal review. Despite the arduous process and the odds against a prisoner prevailing, in California tens of thousands of inmates file such grievances annually. Many are dramatic, such as those described above, and others are arguably more mundane.

These grievances provide a rare glimpse behind the scenes of daily prison life. On the forms they are required to fill out, appellants describe medical care, staff conduct, cafeterias and food, physical safety, cell assignments, disciplinary action, visitation procedures, transfers, and missing property. Collectively, they provide a sense of the ordinary punctuated by the exceptional that makes up prison life. On another level, however, the grievance system can be seen as an internal disputing mechanism, albeit one that is heavily asymmetrical in design and outcome, and that over time has not significantly improved the conditions recently found in *Brown v. Plata* (563 U.S. [2011]) to be cruel and unusual.

An extensive scholarship examines the processes through which people come to recognize a circumstance they confront as a problem, assign responsibility or blame for that circumstance, and lodge a grievance or mobilize action over it (Albiston 1999, 2005; Blackstone, Uggen, and McLaughlin 2009; Earl 2009; Edelman and Cahill 1998; Edelman, Erlanger, and Lande 1993; Edelman, Uggen, and Erlanger 1999; Emerson and Messinger 1977; Felstiner, Abel, and Sarat 1980–81; Hendley 2010; Hoffmann 2001, 2003, 2005; Marshall 2003; Morrill et al. 2010; Nielsen 2004). Among the strengths of this scholarly tradition is that it pays close attention to the importance of distinct sociocultural locations. A key finding is that the ability or willingness of people to identify a problem, blame someone for it, and mobilize action or launch a dispute is socially patterned, with vulnerable, stigmatized, and/or self-blaming populations facing daunting barriers.

Given this consistent finding in the literature, the extensive use of the administrative grievance process by prisoners—among the most vulnerable and stigmatized of populations—is at first glance paradoxical. This article unpacks this apparent paradox. It is derived from our larger study of the California inmate appeals system, for which we collected several kinds of data: face-to-face interviews with a random sample of 120 prisoners in three men's prisons in California; official CDCR data on these prisoners from the Offender Based Information System (OBIS); a separate sample of 459 written grievances filed by California prisoners in 2005–2006; face-to-face interviews with 23 key CDCR personnel, including grievance examiners; and official data on inmate grievances. Here, we draw primarily on the prisoner interview data, although our other data sources provide us with context and we will reference them where relevant.

Almost three-quarters of the prisoners we interviewed have filed a grievance at some point in their incarceration history, with many filing multiple times. Some of these men express self-blame for their incarceration, and most of them report that corrections officials retaliate against those who file grievances. We explore here the parameters of prisoners' "naming, blaming, and claiming" (Felstiner et al. 1980–81) despite powerful internal and external obstacles to doing so. Clearly, prisoners confront a plethora of conditions that are ripe for contestation, and this must be part of any explanation for why so many of them file grievances. But, as decades of literature on disputing and legal mobilization have documented, the presence of grievable problems—even serious ones—is not in itself sufficient to explain the launching of a grievance, particularly in a context of vulnerability, self-blame, and stigma.

Justice Stewart once said, "What for a private citizen would be a dispute with his landlord, with his employer, with his tailor, with his neighbor, or with his banker becomes, for the prisoner,

1. Throughout this article we use the terms "grievances" and "appeals" interchangeably as does the correctional system.

a dispute with the State" (*Preiser v. Rodriguez*, 411 U.S. 475 [1973]). He was implicitly noting that prisoners inhabit what Erving Goffman (1961) called a total institution, where virtually all of one's daily activities are organized and overseen by the authorities. Goffman was writing of life inside a mental hospital when he coined this term, but he applied it to other inmates as well, as did Donald Cressey (1961), Michel Foucault (1977), and others who have described prison as the prototypical total institution.

We argue here that in addition to being a total institution, prison is above all a place of *law*. Surrounded by gun towers and armed guards, with passage from one part of the facility to another governed by "ducats,"² and with everyday practices such as disciplinary actions referred to colloquially by their legal form numbers (in California, "115s" and "128s"), prison is what you might call an "*uncommon place of law*" (Ewick and Silbey 1998). In contrast to the pervasive yet submerged and subtextual quality of law in everyday life, there is nothing *subtextual* about law in prison. Prisoners' willingness and ability to name problems and file grievances must be seen within this context of prison not only as a total institution but as a conspicuously *legal* one where explicit rules govern every aspect of behavior. As we will see, this legal-institutional context enhances prisoners' mobilization of law, in some cases overriding the very stigma and vulnerability that the context otherwise produces.

While recognizing the conspicuous nature of law in prison helps make sense of prisoners' legal mobilization in the form of filing a grievance, a close look at what these men told us in interviews and at the pattern of their grievance filings reveals that they are by no means immune to the internal and external hurdles they confront. As revealed in this article, the inmates in our sample who blame themselves for their imprisonment are less likely to have filed a grievance than those who do not express self-blame. Further, while most of these men have filed a grievance of some kind, relatively few have filed a complaint against staff despite the frequency with which staff disrespect and misconduct came up in our interviews as problematic. Given the common refrain we heard that grievances against staff are particularly likely to result in serious reprisals, it is perhaps not surprising that they often fall out of the "pyramid of disputes" (Felstiner et al. 1980–81; see also, Michelson 2007).

The article is divided into two substantive parts. The first part addresses the problems and concerns articulated by these prisoners. This naming process constitutes the rarely examined front-end of disputes and gives us a glimpse of life behind bars and prisoners' perceptions of their problematic conditions as the context within which formal claims may ultimately be launched. Previous literature on California prisons has singled out gangs, race relations, and the havoc they wreak for inmate interaction, as the focal concerns of prisoners (Hunt et al. 1993). While some of the prisoners we interviewed talked about these concerns, the issues they talked about most often—decent living conditions, medical care, respect, and property—reflect more universal needs. In addition to delineating the problems reported by these inmates, we examine in this section their levels of self-blame for incarceration and the lack of relationship between expressing self-blame and telling us of problems.

In part two, we examine the frequency of grievance filing among these men and the potential obstacles to filing a grievance, such as anticipated retaliation and self-blame. It is here that we investigate the possibility that the law-centric quality of prison—in which formal rules explicitly shape all aspects of life—has important repercussions for prisoners' willingness to perceive and act on institutional violations of those rules. Here too we examine in detail the pattern of grievances and what this pattern reveals about the limits of prisoners' willingness and ability to make certain kinds of claims.

Before presenting these findings in more detail, the following section briefly locates our study within the context of previous research and theorizing.

2. A ducat is a written permission form authorizing a prisoner to move around the prison for a particular appointment or responsibility, such as a work assignment or medical appointment.

Theoretical Considerations

Several bodies of scholarship and theoretical approaches are relevant to this study. Particularly pertinent are the literatures on disputing and legal mobilization (Bumiller 1987; Edelman et al. 1999; Felstiner et al. 1980–81; Hoffmann 2003; Michelson 2007; Morrill et al. 2010), legal consciousness (Ewick and Silbey 1998; Marshall 2003; Merry 1979, 1990; Nielsen 2004), and interpersonal “troubles” (Emerson 2010; Emerson and Messinger 1977). As Jennifer Earl (2009) points out, these literatures have often been isolated into subfields despite their common intellectual goal of exploring how conflicts and disputes emerge and take shape and how social meaning is constructed in the process.

It is a basic premise of the disputing literature that “trouble, problems, personal and social dislocation are everyday occurrences” (Felstiner et al. 1980–81:633), but for a dispute to emerge they have to be perceived as injurious.³ Once an individual perceives and names a problem, it may climb the “pyramid of disputes” (Felstiner et al. 1980–81; Michelson 2007), with someone being blamed and in relatively rare cases claims being asserted. Studies of this “naming, blaming, claiming” (Felstiner et al. 1980–81) process find that it depends on a wide range of social-psychological, cultural, political, institutional, and structural factors (Coates and Penrod 1980–81; Felstiner et al. 1980–81; Gleeson 2010; Hoffmann 2003; Michelson 2007; Morrill et al. 2010).

Among the factors most often discussed as inhibiting both naming and claiming is self-blame. Attribution theory posits that those who blame themselves for a circumstance or event are less likely to identify the situation as injurious, much less feel entitled to a remedy (Coates and Penrod 1980–81; Felstiner et al. 1980–81; Hendley 2010). Studies reveal that self-blame is structurally patterned such that those with fewer resources and/or those in vulnerable social locations are predisposed to both self-blame and disenfranchisement (Hoffmann 2003; Michelson 2007; Morrill et al. 2010).

Further, some people may fear that launching a claim will stigmatize them as troublemakers or make them the target of retaliation (Bumiller 1987; Michelson 2007; Miller and Sarat 1980–81). As with self-blame, the anticipated repercussions of complaining are patterned by social location, with those in less powerful social positions most susceptible to fears of retaliation (Kanter 1979; Miller and Sarat 1980–81:541; Michelson 2007; Morrill et al. 2010). For example, in their study of legal mobilization among youths, Calvin Morrill and his colleagues (2010) found that African American youths had a higher rate of perceived rights violations than white youths, but were no more likely to have taken action, suggesting that African Americans “lumped it” more often than whites.

The effect of power and vulnerability on the ability and willingness to launch claims is also documented in studies of their dynamics in the workplace. For example, Kristin Bumiller’s (1987) African American respondents said they were reluctant to file a discrimination complaint against their employer because they feared retaliation, and some tried to deflect blame from the employer (he didn’t really mean to be unfair) or otherwise rationalize the problem away (it’s not that big a deal). Other research that examines the effect of gender in workplace disputes confirms the importance of such power asymmetries, as women face not only the usual imbalance of power between worker and employer, but gender-based inequalities as well; as a result, they confront greater subjective and objective barriers to making claims than their male counterparts (Calhoun and Smith 1999; Fletcher 1999; Gwartney-Gibbs and Lach 1992, 1994; Hoffmann 2005; Lind, Huo, and Tyler 1994).

Studies of legal consciousness investigate how ordinary people understand and perceive law and act on those perceptions in both legal and extralegal arenas (Ewick and Silbey 1998; Marshall 2003; Merry 1979, 1990; Nielsen 2004). This literature complicates the picture presented above by revealing that disempowered people across the world and in settings as varied as welfare offices,

3. This “naming” that constitutes the front end of disputes has been relatively understudied in part because it is difficult to study that which is not identified as injurious (cf. Emerson 2008, 2010)—a challenge that is arguably mitigated in the prison context where, by most objective measures, potential problems abound.

the workplace, housing projects, and the realm of marriage and the family, actively engage law as a tool of resistance and a “weapon of the weak” (Cowan 2004; Lazarus-Black and Hirsch 1994; Lovell 2006; Sarat 1990; Scott 1985; White 1990). Patricia Ewick and Susan Silbey (1998) point out that while attitudes about law and legal practices are replete with contingencies and contradictions, they are nonetheless rooted in social and cultural structures, institutions, and ideologies. To affirm complexity, in other words, does not negate the social pattern. Thus, John Gilliom (2001) summarizes the stacked deck against the marginalized and socially disempowered: “[T]he institutional, structural, and social pressures push against the assertion of rights” (p. 91).

Several scholars note that cultural forces make Americans “slow to perceive injury” (Felstiner et al. 1980–81:652) because of a “cult of competence” that discourages them from seeing themselves as victims of mistreatment. In her study of American blacks’ perceptions of and responses to racial discrimination, Bumiller (1987, 1988) found an “ethic of survival,” one dimension of which is a denial of injury in the interest of preserving self-respect. Not only may claiming the status of victim have negative implications for self-image, but endurance is positively valued. Several of Bumiller’s (1987) respondents expressed pride in their ability to, as one man put it, “mak[e] it through the rain” and “weather the storm” (pp. 431, 432). This is particularly pronounced in the context of prisons for men—institutions defined by constructions of masculinity anchored in self-sufficiency and where “be tough and strong” is a common refrain articulated by prisoners.

In addition to locating our study within this discussion, we draw on and contribute to what has been called the “micropolitics of trouble,” a field most closely identified with the work of Robert Emerson (Emerson 2008, 2010; Emerson and Messinger 1977). Among the strengths of this sociological work is its ethnographic quality, with in-depth explorations of the life course of interpersonal conflicts. Perhaps because of its “natural history” methodology (Emerson and Messinger 1977:121), the sociology of trouble captures the front end of disputes—the moment when “trouble” is first perceived, thus filling in a large gap in the disputing literature.

Emerson and Sheldon Messinger (1977:121) start from the premise that all social environments are replete with “ambiguous difficulties” and that some of these difficulties are felt as “a vague sense of ‘something wrong’—some ‘problem’ or ‘trouble.’” A wide range of responses may ensue: “[A] person may come to recognize the existence of . . . problems, and yet never do anything in response. It may be that . . . the person decides it is really no problem after all . . .; or that there . . . is nothing that can be done . . . But often the recognition that something is wrong coincides with a weighing of remedies. . .” (p. 122). Recognizing this variation in responses, their analytic focus is on what becomes identifiable as trouble and what explains how people orient to and respond to trouble.

In this article, we examine the identification and processing of “trouble” within the institutional context of prison, and the myriad ways this social location shapes inmates’ perceptions of and handling of trouble. Many insights from the disputing and legal consciousness literatures are confirmed here, particularly those relating to the propensity of stigmatized and vulnerable populations to self-blame, and to the anticipated practical consequences of filing complaints. Contrary to much previous literature, however, these prisoners are nonetheless willing and able to name multiple problems, and the vast majority have filed grievances. We argue here that prison is an “uncommon place of law” (Ewick and Silbey 1998) in which the accoutrements of law are explicit and ubiquitous, and that this institutional feature may offset the social and psychological factors that in other contexts inhibit naming and claiming. Nonetheless, as we will see from the pattern of their claims, these prisoners are not immune to the dramatic vulnerabilities of their institutional location, once again affirming the “pressures [that] push against the assertion of rights” (Gilliom 2001:91) and other forms of claims making.

Finally, our focus on prison life builds on a long tradition of prison sociology. This sociology has traditionally emphasized the question of order and disorder behind prison walls (Clemmer 1940; Sparks and Bottoms 1995; Sykes 1958; Useem and Kimball 1989), and more recently has explored the related issue of prisoners’ modes of adaptation and/or resistance (Bosworth 1999; Carrabine 2005; Crewe 2005, 2007; Kruttschnitt and Gartner 2005; Milovanovic and

Thomas 1989; Thomas 1988). Candace Kruttschnitt and Rosemary Gartner's (2005) comparative study of two women's prisons in California is potentially of particular relevance to this project. They find that microinstitutional trajectories of prisons, which correlate with the historical moment in which a prison opened, the physical design of a prison, the mission of the prison, and other institutional factors, shape the types of experiences people have while incarcerated. Nonetheless, and more relevant to this article, they find that there are enduring similarities that transcend local distinctions. Their work reveals that the shared structural facts of carceral life—most notably the absence of freedom and extreme regimentation—generate differences in magnitude, not in kind.⁴ As Gartner and Kruttschnitt (2004) conclude, “while discourses, practices, and people come and go, important realities of imprisonment persist” (p. 299).

Prison sociology does not explicitly engage the themes of disputing, nor does it interrogate how prisoners interpret their troubles in prison, but these bodies of research have a number of intellectual goals in common. At the most general level, they are all concerned with people's subjective and objective response to problems, particularly in social environments of unequal distributions of power and varying forms of social inequality. Breaking new ground, this article sits squarely at the intersection of these literatures, as we explore the naming of problems and claiming of remedies in one of the most heavily stigmatized, disempowering, and legally regulated institutional contexts of contemporary American society.

Research Access, the CDCR, and Inmate Appeals

The Challenges of In-Prison Research

Despite the unprecedented growth of the incarcerated population in the United States since the early 1970s, there has been a decline in scholarly attention to life inside prison walls (Crewe 2007; Goodman 2008; Simon 2000; Wacquant 2002). In contrast to the era in which Donald Clemmer (1940) and Gresham Sykes (1958) did their work, there has been a paucity of in-prison research in the United States over the last several decades (Simon 2000; for notable exceptions, see Fleisher and Krienert 2009; Irwin 2005; Jenness 2010; Jenness et al. 2010; and Rhodes 2004).⁵

This dearth of in-prison research is certainly not due to a lack of scholarly interest or because the topic has receded in importance. Rather, prison fieldwork is fraught with administrative, bureaucratic, and legal obstacles (Arriola 2006; Jenness 2010; Jenness et al. 2010). To be blunt, prisons are heavily regulated institutional arenas, and officials often do not welcome researchers “poking around” (Arriola 2006:138). Further, prisoners are considered “special populations” in the language of institutional review boards, making in-prison research all the more difficult. Despite these obstacles, it is critically important to get “inside and around penal facilities” (Wacquant 2002:386–87) if we are to portray life inside prison walls and understand the meaning prisoners attach to it.

We undertook this research fully cognizant of the potential challenges of access. One of the authors of this article had developed a track record of research with the CDCR and had good working relations with some key decision makers. Yet even in this best-case scenario, the bureaucratic process of securing research permission and getting prison access was fraught with delays, speed bumps, and mind-numbing paperwork (including, at one point, “an application to submit

4. Relevant for the study reported in this article, Kruttschnitt and Gartner (2005) find that there may be more dissatisfaction in the Valley State Prison for Women (VSPW) than in the California Institution for Women (CIW), but that it is primarily a matter of degree. As Davison, Jenness, and Lynch (2011) note in their review of Kruttschnitt and Gartner's book, “[U]ltimately their research indicates that prisoners experience imprisonment similarly, and respond to it with little trust for others—staff and fellow prisoners alike—then figure out ways to get by without getting drawn into trouble . . .” (p. 241).

5. Interesting in-prison research has been conducted in other countries, particularly the United Kingdom (see, for example, Bosworth 1999; Carrabine 2005; Crewe 2005, 2007; Sparks 1994; Sparks and Bottoms 1995).

an application"). More than two years after we began—years that included multiple trips to secure endorsements from prison wardens, the Inmate Appeals Branch, and the upper echelons of the CDCR in Sacramento—we secured the coveted permission.

Parallel to this process of obtaining permission from the CDCR, we sought the necessary approvals from the Institutional Review Board (IRB) at the University of California, Irvine, and the California Committee for the Protection of Human Subjects (CPHS). The IRB review process to obtain approval to study populations such as prisoners is particularly daunting. Presumably designed to add an important extra layer of protection when researchers propose to study a vulnerable population, form sometimes trumped substance in an IRB permission process that entailed several rounds of miniscule changes and at least one administrative wild goose chase.⁶ Many months after initiating the IRB and CPHS approval processes, our study was approved and our research was finally underway.

The CDCR, the Prison Litigation Reform Act, and the Inmate Appeals Process

At the time of data collection, California was home to one of the largest correctional systems in the Western world, surpassed only by the U.S. federal system. The CDCR is charged with running 33 prisons and at the time of this study housed approximately 160,000 people, all but about 12,000 of them in men's prisons. In addition to its mammoth size, the CDCR is by many accounts a dysfunctional organization. The U.S. Supreme Court recently concluded that inadequate mental and physical health care in California prisons due to overcrowding violates the Eighth Amendment's ban on cruel and unusual punishment and ordered California to reduce its prison population to 137.5 percent of design capacity within two years, translating into a reduction of approximately 30,000 prisoners (*Brown v. Plata* 2011). Reports by journalists, government agencies, and academics confirm that inadequate medical and mental health care as well as other deleterious conditions are common in California prisons (California Correctional Peace Officers' Association 2010; California Inspector General 2010; Corrections Independent Review Panel 2004; Petersilia 2008; Piller 2010a, 2010b, 2010c; *Plata v. Schwarzenegger*, 603 F.3d. 1088 [2010]; Prison Law Office 2010). A wide range of special masters, independent review panels, and other experts reported that in fiscal year 2003–2004 one inmate a week died in California due to inadequate medical care (there could be a 700-prisoner backlog for a doctor's appointment), and on average one California prisoner a week committed suicide (*Brown v. Plata* 2011:5).

The Prison Litigation Reform Act (PLRA) requires prisoners who want to contest such conditions to exhaust internal administrative remedies before they file a lawsuit.⁷ Congress passed the PLRA in 1996 to curb what it believed was an excessive number of prisoner lawsuits, at a time when the prison population in the United States had skyrocketed. While the PLRA contains other important provisions—such as restraints on the ability of courts to intervene in prison management—the relevant provision here is this requirement for prisoners to exhaust the administrative appeals process offered by their state's correctional system before gaining access to the courts (Belbot 2004; Schlanger 2003).⁸

6. See Feeley (2007) and Katz (2006, 2007) for incisive portrayals of IRB practices as censorship and their bureaucratic mandates as overzealous, mindless, and impediments to basic research.

7. The exhaustion provision states: "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted" (42 U.S.C. § 1997e(a)).

8. Subsequent to the enactment of the PLRA, the rate of prisoner lawsuits fell substantially (Schlanger and Shay 2008; U.S. District Courts various years). The number of prisoners' federal civil rights lawsuits declined by 33 percent from 1995 to 1997, even as prison populations increased. By 2010, the per prisoner filing rate had fallen by more than 60 percent (from 26 federal cases for every thousand prisoners in 1995 to 11 per thousand in 2010)—a decline most experts attribute to the exhaustion requirement as well as the new filing fees the PLRA imposed and the legislation's ban on emotional damage awards (Belbot 2004; Schlanger 2003; Schlanger and Shay 2008).

In California, inmate grievance procedures are specified in Article 8, Title 15 (“Crime Prevention and Corrections”) of the California Code of Regulations.⁹ To file a grievance, prisoners are required to complete an Inmate/Parolee Appeal Form—officially numbered and colloquially referred to as a “602.” When we began this research, inmates had to attempt to resolve their grievances informally with the relevant staff as the first step in filing a 602. In some cases—such as an allegation of staff misconduct, contestation by the inmate of a serious disciplinary violation, or an inmate complaint about his/her classification—this informal step could be waived. If the informal effort was unsuccessful, or if it had been bypassed, the 602 was subject to three potential levels of formal review. The informal level of review was eliminated in 2011, but the subsequent three formal levels remain largely unchanged.

At the first formal level, the inmate’s narrative of his/her complaint and proposed remedy is limited to one paragraph on the 602 form, plus a potential additional page, front and back; supporting documentation may be attached. The inmate forwards this to the inmate appeals coordinator (IAC) at the prison, a position commonly held by a CDCR correctional officer. The IAC is charged with screening each grievance to determine if it is in compliance with CDCR regulations, and returning to the appellant those that do not conform to strict requirements. Among the most important of these requirements is that the 602 be filed within 15 days of the incident being contested. Other reasons for screening out a grievance include such things as “unclear appeal issue” or “not within the jurisdiction of the department” (Section 3084.3, Title 15). If the reason for the screen-out can be corrected (for example, the inmate did not submit the proper documentation), the appeal can be revised and resubmitted. The IAC then usually forwards a grievance that is not screened out to the correctional authority most relevant for the complaint (for example, the captain of the yard where the prisoner resides) for a first-level response. The response can take one of three forms: granting the requested remedy in full, granting the requested remedy in part, or denying the requested remedy. The official response and justification are entered onto the 602 form beneath the inmate’s narrative. If dissatisfied with this outcome, the prisoner may explain his/her dissatisfaction beneath the official’s response and submit the grievance for a second level of review, conducted by the warden or his/her designee, such as the deputy warden. Once again, the grievance may be granted, partially granted, or denied. These responses too are entered onto the 602 form, directly beneath the inmate’s level-two narrative.

If the appeal is not fully granted at the second level, the prisoner may request a third-level review by the CDCR director of adult institutions, who in turn delegates the review to the Office of Inmate Appeals in Sacramento. There, each grievance is read and responded to by an examiner who may or may not conduct further investigation. Such investigation may consist of telephone calls to officials at the prison where the complaint originated or document retrieval, but rarely involves a trip to the prison. The chief of inmate appeals then informs the appellant in writing of the final decision, including verbiage making it clear the appellant has exhausted all internal remedies.

There are a few general exceptions to this process. After the CDCR medical system was put in receivership in 2006, medical appeals were given their own track. A separate form, 602-HC (Health Care), is used when the complaint involves medical, dental, or mental health care, and specialized staff evaluate and respond to them at each level. Another exception involves allegations of staff misconduct. The procedure for these allegations is carefully constructed to preserve the privacy of the implicated staff according to the California Peace Officers’ Bill of Rights and, as we will see later, is shaped by the assumption that inmates often “manipulate or retaliate against staff” (CDCR 2003:2).

Academics, correctional administrators, and activists alike have critiqued the PRLA. Recognizing that it gives states total discretion over the number of levels of administrative

9. Section 3084.1 of Title 15 begins, “Any inmate or parolee under the department’s jurisdiction may appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare.”

review, the timelines, and the intricacy of forms and procedures, Margo Schlanger (2003) writes, “Essentially, then, the sky’s the limit for the procedural complexity or difficulty of the exhaustion requirement” (p. 1650). Jeanne Woodford, former acting secretary of the CDCR, testified before Congress in 2008:

For those prison officials who fear the courts, the PLRA provides an incentive to make the grievance procedures more complicated than necessary . . . Grievances may be rejected because the prisoner could not clearly articulate his complaint, or for a minor problem such as using handwriting that is too small. I know of at least one state that will screen out appeals if they are not signed in blue ink and yet another state that charges prisoners to file an appeal (Woodford 2008).

A report on the consequences of the PLRA by Human Rights Watch (2009) concurs: “Some grievance systems include requirements that seem designed to discourage, rather than facilitate, compliance [with the requirements] by prisoners” (p. 12). A federal judge has complained that prison grievance systems can become “a series of stalling tactics, and dead-ends without resolution” (*Campbell v. Chaves*, 402 F. Supp. 2d 1101, 1106 n. 3 [2005]). And, Rebecca Bordt and Michael Musheno (1988) reveal that even in a state where inmates were once represented on grievance committees, the process was transformed into a “sophisticated social control mechanism serving only bureaucratic interests” (p. 7). Consistent with these critiques, as we will see later in more detail, grant rates for inmate grievances in California are low at every level of formal review.

We do not intend here to do an evaluation of California’s grievance process. Instead, this overview of its multiple levels and requirements and its asymmetrical nature provides the background for our examination of prisoners’ experiences of their problems, their willingness to launch grievances, and the pattern of those grievances in response to the pressures of the prison context.

Research Site, Data, and Methods of Analysis

Interviewing a random sample of all California prisoners would have necessitated accessing 33 prisons, which was logistically prohibitive. Instead, we secured random samples of 40 men from each of three prisons that together approximate the characteristics of the larger CDCR male population on several important dimensions. These three prisons are scattered around the state and vary by age of facility, custody levels of the population, population size, number of grievances that reach the third level of review, overcrowding levels, and violence rates. Green Valley Prison (GVP)¹⁰ is a modern, maximum security institution with one of the highest rates of inmate grievances in the state. At the time of our interviews, it housed approximately 5,000 inmates in facilities designed for fewer than half that many people. In contrast, California Corrections Facility (CCF) is a minimum and medium security prison, with a mid-range level of grievance filing. It too is overcrowded, with over 6,500 inmates in facilities built for slightly fewer than 4,000. Finally, Desert Valley Center (DVC) is a medium security prison with a relatively low rate of grievance filings. With over 4,000 inmates in a facility built for little more than half that many, it too is severely overcrowded.

We chose these three prisons, which differ on a variety of dimensions, for multiple reasons. First, doing so allowed us to move beyond the common practice of focusing research on a single prison and engaging in convenience or snowball sampling within that prison. Second, these prisons generate varying rates of grievance filings that make it to the highest level of review, as reported by the CDCR. That is, they represent “high,” “medium,” and “low” rates of official grievance filing from the point of view of the CDCR.¹¹ Third, focusing on these three prisons allowed us to collect data on

10. The three prisons have been given pseudonyms.

11. The CDCR collects data on the grievances from each prison that make it to the third level of review, but there are no available data that reveal the frequency with which grievances are filed and resolved at each prison at earlier levels of review.

a diverse sample prisoners. In other words, data collection was not driven by a commitment to compare and contrast findings across prisons; rather, it was driven by a recognition that collecting data from prisoners in all 33 prisons was prohibitive and by a commitment to ensure a diverse sample that is relatively representative of the total California prison population.

Our protocols detailed procedures for obtaining informed consent, maintaining confidentiality, and responding to the kind of special circumstances that researchers encounter when conducting research in prison settings. Standard interviewing techniques and probing strategies, as well as appropriate responses to unusual circumstances, were addressed in the research team training. As much as possible, we aimed to reduce interviewer bias and ensure that all subjects were approached to participate in the study in a similar fashion and were asked standard questions in similar ways.

Five interviewers—the authors of this article and three advanced graduate students (including one fluent Spanish speaker)—were trained to comply with these protocols. Inmate interviewing began in July 2009 and ended in late September 2009. During this time, members of the interview team traveled to each of the three prisons and together completed 120 face-to-face interviews with prisoners, including some who were confined to administrative segregation (“Ad Seg,” or what prisoners call “the hole”).

We made every effort to ensure a random sample of prisoners and that officials did not interfere with random selection either on purpose or inadvertently. About ten days prior to the first day of interviewing at a particular prison, we requested from the CDCR Office of Research the official roster that identified every person housed in the prison by name and CDCR number. From this roster, we used SPSS to randomly select 50 inmates to be solicited to serve as study participants, with the goal of interviewing the first 40 of them (the other 10 would serve as backup candidates for interviews in case of denials or when a prisoner in our original sample had been transferred or released). We then sent our list of potential study participants to our liaison at the prison, typically the public information officer or another lieutenant, so that the prisoners could be notified by a ducat that they were invited to meet with an interviewer. This process resulted in a 93 percent participation rate.¹²

Two practices were key to protecting the integrity of random selection, prisoner privacy and confidentiality, and ensuring that participation was as voluntary as possible in a prison setting. First, ducats stated the appointment was for “research on prison life” or “interview,” and officers were asked not to discuss the research with inmates. Although upper-level prison administrators were briefed on why the research team was coming to the facility and why they were there for multiple days, we made an effort to keep rank-and-file officers, especially the ones who escorted prisoners to and from interviews, unaware of the purpose of the study. We did so in order to minimize the degree to which they could intentionally or unintentionally contaminate the field or otherwise undermine the research. Despite our best efforts, on occasion it was clear that rank-and-file officers had a (in some cases erroneous) sense of why we were there; we did not confirm or deny their assumptions. Second, if an inmate could not be scheduled for the interview—for example, because he had been paroled, transferred, or was in the hospital—the CDCR staff was instructed to note the reason and then proceed to the next randomly selected person on the list until all interview appointments were filled. A few people who were scheduled for interviews did not show up to the meeting. They occasionally had another appointment at the same time (e.g., a medical appointment or a work assignment), and sometimes we were told that an inmate chose not to leave his cell. Those who did not attend their interview appointment for whatever reason were given an opportunity to be interviewed on a subsequent day.

12. Word inevitably spread among some prisoners that we were doing confidential interviews about prison life, and it was not uncommon for us to be approached by an inmate not on our list asking to be interviewed. We did not comply with these requests in order to remain true to random selection, but they do suggest to us that the research was favorably received by those we interviewed.

The interviews were conducted in strictly confidential settings where only the interviewer and interviewee were present, and where they could not be overheard. The location varied depending on the available space. For example, we interviewed in correctional counselors' offices, staff lunch rooms, chapels, and visiting rooms, as well as conference rooms and what appeared to be custodial closets. Once respondents had given their informed consent to be interviewed,¹³ we asked permission to record the interview—with the understanding that the recorder could be turned off at any time—which 91 percent of our respondents agreed to.

The interviewer asked both closed and open-ended questions about housing arrangements, daily prison life, programming, problematic or bothersome conditions, perceptions of the inmate appeals process, involvement with the appeals process, assessments of the legitimacy of the appeals process, perceived fairness of the criminal justice system, and recommendations for improving the grievance system. After a few initial rapport-building questions, we asked about problems in prison and how they dealt with those problems. Later in the interview we asked if they had filed any grievances and if they had, we asked about specific grievances they had filed, completing an incident form that included: (1) a grievance they had filed that was resolved informally; (2) the most recent grievance they had filed; (3) the most important grievance they had filed; and (4) a grievance they had filed, if any, that had been granted.¹⁴ The interview instrument was semistructured in format, and included follow-up questions that led to free-flowing exchanges. This allowed the prisoners, who are often restricted from speaking with outsiders, to share their personal stories and to have their voices heard. The average interview length was slightly over one hour, with the shortest lasting just under half an hour, and some extending well over two hours. As a final step, we concatenated official data from the CDCR's database on inmates (OBIS) to the interview data. Because privacy concerns required that the identities of participants be kept confidential, we requested and received central file information on 80 prisoners from each of the three prisons (our sample of 40 per prison, plus 40 "decoys").

Table 1 presents statistical information on our study sample and the California men's prison population. In general, our procedures produced a sample that is comparable to the overall men's prison population in California. There are, however, a few notable departures. For example, relative to the total prison population, our sample includes slightly more prisoners sentenced for crimes against persons, more level 2 (low-medium security) and level 4 (maximum security) prisoners, and fewer level 1 (minimum security) and level 3 (high-medium) prisoners. Our sample cannot be regarded as statistically representative of the entire male CDCR population. However, it is a diverse sample that captures the range of experiences men have in California prisons.

The coding process began with the authors keeping notes during the data collection period—what Kathy Charmaz (2006) calls "memo writing"—to track emergent ideas and themes. Once the data collection was complete, we read through a subset of interviews to develop preliminary coding categories designed to capture, among other things: (1) what prisoners identify as problems; (2) how they make sense of those problems, including attributions of blame for problems associated with prison life; (3) what grievances they had filed; and (4) whether they feel fairly treated by the criminal justice system. A team of four advanced graduate students then did "focused coding" (Charmaz 2006) of all the transcribed interviews, coding that was subjected to multiple checks by members of the research team. These coded data, coupled with concatenated official data and research notes, form the basis for the analyses and arguments presented here.

13. People were not interviewed unless they gave their informed consent. Moreover, they were not required to answer any question they chose not to answer and were allowed to discontinue the interview at any time. Recognizing that our interviewees lived in carceral environments, the research design and attendant logistics were organized to ensure that we did not, in any way, signal to people that they were required to participate, nor did we promise anything in exchange for participating.

14. A copy of the full instrument, including the incident form, is available upon request.

Table 1 • A Comparison of Select Characteristics of the Study Sample and the Total Population in CDCR Prisons for Men

	Total Study Sample		Total Adult Population in CDCR Prisons for Men ^a	
	n	Percent	N	Percent
Total	120	100	146,360	100
Age				
Mean	38.33		37.39	
Median	38.00		36.00	
Std. dev.	11.28		11.18	
Range	20–67		18–92	
18–25	16	13.3	22,968	15.7
26–35	40	33.3	46,738	31.9
36–45	30	25.0	40,884	27.9
46+	34	28.3	35,770	24.4
Race/ethnicity ^b				
Hispanic	48	40.0	56,880	38.9
White	29	24.2	37,954	25.9
Black	37	30.8	43,451	29.7
Other	6	5.0	6,738	5.5
Offense				
Crimes against persons	69	60.5	80,202	54.8
Property	19	16.7	26,892	18.4
Drug	21	18.4	26,418	18.1
Other	5	4.4	12,841	8.8
Custody level				
1	18	15.7	25,226	19.6
2	47	40.9	43,288	33.6
3	17	14.8	31,037	24.1
4	33	28.7	29,405	22.8
Sentence type				
Determinate sentence	59	49.2	75,375	51.5
2 nd strike	37	30.8	37,761	25.8
3 rd strike	6	5.0	8,196	5.6
Life	15	12.5	21,222	14.5
Life without parole	3	2.5	3,512	2.4
Death row	–	–	585	.4
Sex offender registration				
Yes	20	16.7	21,381	14.6
Gang				
Yes	20	16.7	22,070	15.1
Mental health				
CCCMS ^c	33	27.5	25,148	17.2
EOP ^d	1	.8	4,458	3.0

Source: CDCR's Offender-Based Information System (provided to the authors by the CDCR)

^aFigures include the study population and exclude those residing in fire camps.

^bRace/ethnicity classifications are based on official CDCR data.

^cCorrectional Clinical Case Management System.

^dEnhanced Out-Patient Program.

We begin our analysis in the following section by presenting the range of issues our respondents identified as problems and how they assigned responsibility and blame for their incarceration. The problems these prisoners cite represent the front-end of potential disputes, an aspect of the disputing pyramid that is often mentioned in passing but rarely examined in detail (for rare exceptions, see Earl 2009; Emerson 2008, 2010), much less in the prison context.

Naming in Prison: “*This Can’t Be Right*”

Identifying the Problems

The prisoners we interviewed named a wide range of problems, and most identified multiple conditions and incidents as problematic. As we will see, contrary to what one might expect from the literature, neither the stigma and vulnerability of prisoners nor the self-blame that many of our respondents expressed significantly inhibited them from perceiving and naming these problems. Our interviews with prisoners began with conversational questions about where they were housed and how it was going for them. A surprising number of them (44.2 percent) told us at first that they were doing well (e.g., “I get along just fine;” “goin’ cool;” “all right;” “it’s goin’ good;” “it goes well for me”); some (17.4 percent) even said they were doing very well (e.g., “can’t get no better”). Early in the interview, we asked them if there were things in prison that were particularly bothersome to them. This may seem like a peculiar question to ask of people who are deprived of their liberty in conditions that courts have declared to be cruel and unusual, but in fact some of these men (17.6 percent) initially told us they had “no problems” and that nothing was bothersome.

Over the course of our conversations, however, virtually all of them (96.2 percent) talked of problems, with over 60 specific issues being mentioned. Even those who originally reported no problems eventually raised multiple complaints about prison life. Most men (55.7 percent) cited some aspect of living conditions, such as dilapidated facilities, bug infestations, excessive heat, and broken plumbing. Beyond this multifarious category of living conditions, the most frequently mentioned problems had to do with inadequate medical care (39.6 percent); disrespect from staff (38.7 percent); property missing or damaged by the CDCR (33 percent); and the lack of programming or jobs (27.4 percent). If we focus only on problems *named*, and exclude those mentioned within the context of specific grievances, the pattern is similar, with two important exceptions: missing or damaged property falls out of the top tier into sixteenth place (in other words, when property complaints were mentioned it was usually while discussing specific grievances), and staff disrespect moves up to second place.

A wide range of problems associated with living conditions figured most prominently in these prisoners’ interviews. For example, a black¹⁵ man in his forties who is housed in one of the older prisons said: “You have the way they feed you, the cleanliness of the place, how it looks. Look at the ceiling . . . It’s like living outside. You’ve got ants and roaches and stuff you can’t get rid of . . .” (#103¹⁶). Sometimes conditions relating to concrete daily needs came up. Another black inmate, when asked about the most common problem people face, told us, “It’s hard to get laundry . . . and you gotta go through all kind of drama to get it . . . they come up with a fine reason you ain’t gonna get it” (#10). A Mexican American who has been in prison for over a decade on a two-strikes

15. Our designations of the race/ethnicity of these prisoners are based on their self-identifications, some of which differ in a number of interesting ways from their official racial classifications. For example, many of those officially classified as “Hispanic” self-identified as “Mexican,” regardless of how many generations they and their families had been U.S. residents or citizens. Conversely, the CDCR sometimes classified men as “Mexican” when they told us they were “Hispanic,” or in one case “Hispanic/white.” Six of the 37 men officially classified as “black” self-identified as “African American.” One man who the CDCR classified as “black” said he was “Cuban.” In the four cases in which people told us they were of mixed backgrounds—“Indonesian/Mexican,” “Mexican and Cuban,” “African American/Puerto Rican,” and “Korean/black”—the CDCR classified them as “Hispanic,” “Mexican,” “black,” and “black,” respectively. One person who said he was “Native American/Pima” was classified by the CDCR as “Hispanic.” Interestingly, the category that remained most consistent across CDCR classification and self-identity was “white.” The only exception to this was an individual who was officially classified as “white” but who referred to himself as “European,” followed by the statement, “It doesn’t matter—whatever they normally do, ‘white,’ ‘Caucasian,’ ‘European’—it’s just my ancestry” (#117). Beyond the issue of different classification categories, we are sensitive to the fluid and contingent nature of racial identification, and it must be stressed that these self-descriptors may reflect this moment in time and the prison context. See Saperstein and Penner (2010) for an interesting empirical study of the effect of incarceration on racial identity.

16. Throughout this article we use randomly assigned study-identification numbers to reference individual prisoners. This practice maintains confidentiality and allows the reader to track particular study participants throughout the article.

drug charge and who lives with 100 other men in what used to be the gym and is now outfitted with triple bunks, described the conditions: “You’re sharing six toilets with 100 dudes . . .” (#106).

Complaints about medical and dental care included some gruesome stories. A black prisoner serving a two-strikes mandatory sentence for burglary told us of the aftermath of an accident during his transfer to the prison by state bus:

A mobile home ran into the state bus and the bus flipped over. I fractured my collar bone, injured my spine, broke two of my teeth right here . . . They were supposed to take me to the hospital. Instead they cut us out of the bus and just transported us on another bus. And then we came here and then still didn’t get seen by medical for like another two weeks . . . They had me sitting here for like a whole two weeks after knowing that I was injured. You could see my bone up here, my collar bone. I couldn’t bend over. My lip was slit right here . . . (#152).

Others also spoke of problems seeing a doctor or getting medicine. A white Vietnam War veteran with post-traumatic stress disorder who is doing a life sentence for murder said he pulled his own decayed teeth because the backlog to see a dentist was so long (#116). A white prisoner in his mid-forties who is serving time at Desert Valley Center and is housed in a “special needs yard” (SNY)¹⁷ told us of his experience trying to see a doctor:

I don’t think a person should have to go man down [“man down” refers to a prisoner lying prone on the ground] if you got a serious medical need . . . I lost my hearing and my eye was drooping almost closed, and it took them four days to see me . . . when they finally did see me the doctor thought I had Bell’s Palsy . . . (#3).

It turned out that he had an advanced ear infection and had temporarily lost his hearing. Later, he recounted how difficult it was to get painkillers because officials assumed he was an addict.

Other telling examples include a white prisoner at California Corrections Facility who had open heart surgery before coming to prison and said he had gone for two weeks without his medication. He reported: “They left me without my medication for two weeks. I take blood thinners. I have hardening of my heart and . . . I told them I need my medication or I was going to have a stroke . . .” (#22). A man with a history of mental health problems serving time at Desert Valley Center told us he had had a skin infection for a year and a half before getting care. He said:

I was trying to get antibiotics. I was having an itch that was like unbearable, man. It went on for, like I said, a year and a half. They were telling me, “it’s in your mind.” I’m like, “yeah, if it was in your mind and you were itching every day . . . you could at least try antibiotics.” And I finally seen the dermatologist and he goes, “yeah, you’ve got a skin infection.” Gave me antibiotics. It just knocked it out (#154).

Missing or damaged property takes on added meaning in prison, where personal possessions may be one’s only link to the outside world. A black prisoner and former gang member who had become Christian (who, when asked his racial identification said he was “black, or AfroAmerican, or whatever they’re calling us now”) said his property was lost while he was in administrative segregation and explained, “My pictures and stuff was in there . . . that was real important to me . . . that’s the only way I see my son was through those pictures . . .” (#110).

An inmate housed in an SNY described his transfer to a different prison when the guards on the bus told the prisoners not to talk to each other and that if they talked their property would disappear. Two men started talking anyway, and none of the prisoners’ property was waiting for them at the other end. He said:

So when we get to [the name of the specific prison] I wait for my property and my property never showed up . . . I’m like man, now I don’t have my watch, I’m really stressed out, my watch is gone . . . my personal

17. Special needs yards typically house prisoners who are at risk of violence from other inmates, for example because they are “deactivated” gang members or because the nature of their crimes—rape or other sex offenses—makes them susceptible to retaliation.

pictures and everything. Pictures and stuff like that of my mom, my girlfriends back in the day . . . I'm thinkin' a guy might be walking around with my pictures and you know I really don't like that, that somebody get ahold of my personal stuff like that (#10).

Lack of rehabilitative programming was also a common concern. An alcoholic told us he wanted to go to Alcoholics Anonymous while in prison, but it was difficult to get in: "It's hard to get on the list . . . You have to get in this rotation to get in, you know, it can take a few weeks to get yourself on the list . . . and for you to get into a meeting. So I'm not basically getting any kind of treatment and never got any kind of treatment in prison for my alcoholism" (#2).

The prisoner who spoke of sharing six toilets with 100 other men discussed the humiliations of prison and staff disrespect. For example, he told us of what happened after tobacco was found in a cell. After that, he said, everyone had to be strip searched on a daily basis: "Every time we go out (to the yard) and come in, we gotta get strip searched. Every day . . . You know, it's humiliating. You feel harassed" (#106).¹⁸

The black prisoner in his forties who spoke at length about prison conditions (quoted earlier) said the most common problem prisoners face is "Prison, period." He has spent much of his life in prison and referred to people like himself as "convicts" who have done what he called "hardcore time" and who "demand respect," as opposed to people who are just in prison briefly, who, he said, will "lick [the officers'] boots" and "jump through the hoops." He covered almost all of the bases in terms of complaints, emphasizing what he called "asshole cops":

The officers here are . . . on some kind of power trip most of them. Because you're over somebody doesn't mean you can just treat them any kind of way or talk to them any kind of way, or look down at you. We're human beings just like you are . . . They got their way of doing what they wanna do. And they get away with it . . . Say like I'm a cop and I don't like you. I'm going to get this big rapist dude and put him in a cell with you . . . or I'm going to pay him some lunches or give him something to get you . . . Or . . . I'm going to tell the blacks the whites are whoop de whoops or [stuff like] this. Oh, *man*, all that type of stuff really happens like they say on TV, it really happens (#103).

Later in the interview he said:

This place is a joke . . . They give these people too much power over you, over your life, your freedom. They got these power-tripping people [guards] that need psychological evaluations . . . because they're the guys that got their lunch money taken in elementary school, and now they're getting back on people (#103).¹⁹

An Hispanic man in his twenties serving time in maximum security put it this way: "They treat us like . . . we're a bird in a cage. You know? And, they just get to open us up, or do whatever they want with us. Tell us when to do this and when to do that . . . there's no reason you should be treated like this, you know?" (#83).

18. Beyond these more common complaints about living conditions, inadequate medical care, disrespect, and missing property, a number of people spoke of the sheer boredom of prison. The man who told us about his skin infection and efforts to get antibiotics later said, "I'm on my bunk 22 hours a day just passing time . . . It's like if you ever saw the movie Groundhog Day. That's what this place is like, over and over . . . Men like rain because it changes the seasons a little bit" (#154). Commenting on the monotony of prison, an Hispanic man who had been in prison over five years on a drug charge talked movingly about how a group of them had been denied yard time, and had just gotten it back. "Believe it or not," he said, "an hour outside, it . . . you know, we can play some handball, we can work out, we can walk the track, you just go out there and sit down, you listen to your headphones or music, and just get lost, and we need that, the yard" (#4).

19. While many prisoners voiced complaints about prison staff—guards in particular—others went out of their way to extend the benefit of the doubt and were remarkably generous in their characterizations. A white inmate in a minimum-security yard, who was among the few who asked not to be recorded, said of COs: "There are some bad apples, but they are just people like all of us. You know, when you are with people eight hours a day, you see them as people . . . It's inevitable, because they ARE people and you have to see them that way" (#60).

Many others also focused on staff disrespect. A young, white man in a minimum security unit reported:

We call this like PC [protective custody] for cops here. Because they get away with stuff here that they wouldn't get away with at a level 3 or a level 4 . . . There are no lifers here at all. Everyone here has a release date, so police officers think that it's okay to use obscene gestures, put us on the spot in front of other inmates, and they can get away with it here because they know most people won't do anything because . . . they don't want to do extra time (#11).

The black inmate who talked about his son's pictures among his missing property said:

The COs tend to think we're not human. We're not people, we're just criminals . . . COs get to mess with you . . . you know what I'm sayin'? They get to pick at you and this is people's lives versus a game to a CO . . . It has nothin' to do with their life. But, it has somethin' to do with *our* lives. Because they have the power to take away time. And, that's something God gave us, is time (#110).

The emotional fallout of threats to one's sense of self such as those evoked by strip searches and staff disrespect is intensified in the prison environment. In her description of a maximum security prison, Lorna Rhodes (2004) notes, "A sense of exposure and shame—the threat of being 'broken'— . . . becomes a pervasive pattern of feeling, apart from any particular incident of overt humiliation" (p. 56). She continues, quoting Michael Ignatieff (1986), "In the best of our prisons . . . inmates are fed, clothed, and housed in adequate fashion . . . Yet every waking hour . . . [prisoners] still feel the contempt of authority in a glance, gesture or procedure . . . Needs are met, but souls are dishonoured" (Rhodes 2004:57).

As we have seen, the prisoners we talked to spoke at length about a wide range of problems. Some were related to the *inadequacies* of how they are "fed, clothed, and housed." And, others were about the threats to dignity and "dishonoured souls" that Ignatieff and Rhodes chronicle so eloquently, and that are expressed in these raw, first-hand accounts.

Self-Blame and the Recognition of Problems

Contrary to what one would predict from the scholarship on self-blame and its tendency to suppress the ability to name injurious conditions, the men in our sample identified prison conditions as problematic even when they expressed significant levels of self-blame. When asked whether they think they have been treated fairly by the criminal justice system,²⁰ 43 percent of the prisoners we interviewed believed they had generally been treated fairly by the criminal justice system, and 34.7 percent said that they themselves were to blame for their incarceration.

They expressed self-blame in very clear terms. For example, an Hispanic prisoner in a level 2 prison said, simply, "Whose fault is it? We brought ourselves here" (#51). Another revealed, "It's pretty much my fault for being in here . . . I smoked a lot of marijuana . . . got into it with the mother of my child . . . all the basic faults of prison men . . ." (#1). Others were matter-of-fact: "You do the crime. You do the time" (#159). Some seemed impatient with those who complained: "We're in prison . . . if you don't like it, don't come back, you know" (#4). And, "This is a prison and it's not Disneyland. They're not here to make you comfortable. We did a crime and this is what we get . . . I broke the law and this is the price I have to pay" (#156). An Hispanic man said philosophically, "I'm a narcotics offender . . . I know my mistakes . . . so I'm at peace" (#157). A Mexican American prisoner leaned in to confide, "You know what? And, this is a secret, so don't tell nobody. I've actually asked for this, because what I was doin' on the streets . . ." (#106). Occasionally too, an "ethic of survival" (Bumiller 1987, 1988) and a "cult of competence" (Felstiner et al. 1980–81) surfaced. For example, the very term "convict," which some of the prisoners in this study used to refer to themselves, connotes a sense of pride in the ability to do

20. Interviewers asked the following question: "Looking back over your experiences in life and things you've done, do you think you've been treated fairly by the criminal justice system?" Thereafter, we asked "why?" or "why not?"

“hardcore time.” Relatedly, prisoners speak of “doing time rather than letting time do you” as both an imperative for survival and a badge of honor.

Yet, these same men were fully capable of identifying the problems of prison. The prisoner who insisted he was a “convict” capable of doing “hardcore time” (#103) was among the most talkative of our respondents and told us at length about all the problems in prison. In one of the most self-blaming interviews, an African American prisoner serving a two-year sentence for a sex offense said he had to “take responsibility” for being in prison, but went on to say: “If you were to stay here a month, I guarantee you would see things that [you’d say] ‘This can’t be right’” (#104). And, the man who told the interviewer the “secret” that it was his fault for being in prison, began the interview eager to talk about all the problems: “Well, sure, where do you want me to begin?” (#106). The Hispanic prisoner who told us, “I know what I did so I’m at peace,” did not let others—in this quote, guards—off the hook: “We messed up, so what? You’re no better than me [just] because you’re in a green suit” (#157).²¹

Self-blame may sometimes muddy the perception of a situation as injurious, as suggested in the literature, but almost without exception the men we spoke to—including those with significant levels of self-blame, as well as those expressing some version of a “cult of survival” (Bumiller 1987)—pointed to problematic conditions both large and small, dramatic and seemingly mundane. Further, as we see in the next section, they frequently contested those conditions in writing, often overcoming daunting internal and external obstacles to do so.

Grievance Filing: “You Know That Sometime You Just Gotta Get Up”

Almost three-quarters of the men in this study (74.2 percent) have moved up the disputing pyramid at least once, filing a grievance with the CDCR over their problematic conditions. More than three-quarters (76 percent) of these have filed more than once; some said they had launched dozens of claims; a handful reported filing more than fifty; and, two said they had filed about 100 times.

A majority of prisoners within virtually every demographic or status group—age, race, education, gang status, mental health status, offense status, sentence type, registered sex offender status, etc.—have filed a grievance with the CDCR. For example, while the likelihood of filing increases with prisoners’ age (probably reflecting length of time in prison, and therefore increased opportunity²²), even in the youngest age group (18 to 25 years) more than half (56 percent) have filed an appeal. Those who identified as African American or black were most likely to have filed a grievance (86.5 percent), but the majority of whites (82.8 percent) and Hispanics (60.4 percent)²³ also reported filing at least once.²⁴ Our random sample included few noncitizens, but of the nine

21. In California, prisoners wear blue and correctional officers wear green.

22. There is a statistically significant (at the .01 level) positive correlation between years incarcerated and having filed a grievance. Those who have filed a grievance have spent on average approximately twice as much time in prison as those who have not—9.4 years and 4.1 years, respectively.

23. A prisoner (#6) who identified himself as “Mexican” who had filed several grievances spontaneously offered, when asked his racial identification, “We’re a hush-hush type of people. We don’t complain . . . I mean we complain emotionally, but as far as ‘Man, I got a case and I need to fight this case. I’ll do it tomorrow.’ It’s not gonna happen. And that’s the type of people we are.” When the interviewer asked, “And which group in prison do you think is not the hush-hush people,” he responded, “the blacks.”

24. It is not our main concern here to track and explain variability in grievance filing, but rather to establish that a majority in all groups have filed. Nonetheless, it is interesting to note that our finding that African American inmates file more than those who identify with other race/ethnicities is contrary to what one would expect from some of the existing literature. In their study of youth, Morrill and colleagues (2010) found that African Americans were proportionately less likely than whites to have filed a complaint about their perceived rights violations and argue that this reluctance is in part due to African Americans’ experiences of stigmatization and subordination. Other works similarly point to African Americans’ skepticism toward legal solutions for their problems, shaped by centuries of subordination and their daily encounters with police (Anderson 1999; Bumiller 1988). The higher grievance-filing rate among African American prisoners is thus at first glance perplexing. One possible explanation is that the prison environment, consisting disproportionately of people of color, upends the usual racial hierarchy and relative empowerment, as others have found in women’s prisons (Kruttschnitt and

permanent legal residents and seven people “currently without papers,” 56.3 percent and 57.1 percent, respectively, had filed at least one appeal.

A pattern of grievance filing also emerges when considering prisoners’ perceptions of whether they have been treated fairly by the criminal justice system. Men who perceived they had been treated unfairly were significantly more likely to have filed a grievance than men who believed they had been treated fairly (82.4 percent and 58.1 percent, respectively [$p < .01$]). Nonetheless, even among those who believed they had been treated fairly, a clear majority had filed at least once.²⁵

Beyond these individual-level demographics, most respondents from each of the prisons and custody levels have filed grievances. While a majority in each prison have filed, the size of that majority varies. At maximum-security Green Valley Prison, 87.5 percent of our interviewees had filed a grievance, while at California Correctional Facility, 70 percent had filed and at Desert Valley Center, 65 percent had done so. This variation parallels custody levels. Of the men we interviewed in custody level 4 (maximum security), almost 88 percent have filed a grievance; 82.4 percent of those in custody level 3 have filed; 66 percent in level 2; and 66.7 percent in level 1 (minimum security)²⁶—a pattern we revisit when considering the impact on grievance filing of prison as a total legal institution.

These men are aware that the odds are against them in the grievance process. In describing their experiences with appeals, inmates were often adamant in their critiques. For example, a white inmate serving time in a level 1 prison said:

Prisoner: It’s a hassle, a bunch of rhetoric, and you don’t normally get anywhere . . . It’s laughable.

Interviewer: It’s laughable?

Prisoner: [deadpan] Hilarious (#3).

Even more emphatic, a black prisoner serving a five-year sentence for possession of a controlled substance reported: “Of course they can basically do to us what they want and you know, your word doesn’t mean crap . . .” (#59). Another prisoner, also serving time for possession of a controlled substance, said the following when referring to the informal level of review that by policy was not logged in: “Me writing my grievance out and giving it to [the correctional officer], all you got to do is tear it up and say you never got it” (#103). The same person commented on how hard it is to get “justice” with a 602 even when it is processed: “They use these back doors and loopholes” (#103). Summarizing his frustration with the asymmetrical quality of the process, an American Indian in a level 2 prison who had filed twice said simply, “They decide. You just complain” (#18). Asked whether they agreed, strongly agreed, disagreed, or strongly disagreed (or none of the above) with the statement “602s work pretty well,” only one of our respondents strongly agreed (29 others agreed).²⁷ In contrast, 43 either agreed (28) or strongly agreed (15) that “Inmates think the appeals process is a joke because nothing ever comes of it.”²⁸

Gartner 2005; Kruttschnitt and Hussemann 2008; Smith 2012), with corresponding shifts in rates of legal mobilization—an explanation that underscores the extraordinary power of institutional context.

25. The only exception we found to this majority-filing pattern was among the ten people whose interviews were conducted entirely in Spanish. Of these, only four had filed a grievance, no doubt explained in part by the added challenge of filing for non-English speakers. Technically, the CDCR is required to “provide the assistance necessary to ensure that inmates who have difficulty communicating in written English have access to the appeal process” (Title 15, Article 8, Section 3084.1.b); however, there is no indication of any active effort to do so and no one we spoke with said they had received assistance from the CDCR.

26. While it is possible that some of the grievances these prisoners report were filed at a different facility or custody level, we are confident that current custody level serves as a useful indicator to assess the empirical relationship between custody level and filing.

27. This section of our interview was administered to only 81 men from our sample, after an initial run at Desert Valley Center.

28. Prisoners’ continued use of the grievance process despite their negative attitudes about it is consistent with Gallagher’s (2006) study of legal attitudes and disputing in China.

Indeed, the grant rate for grievances appears to be low at every level of review. It is difficult to estimate grant rates at the informal level because the CDCR did not log in informal grievances and no data were gathered on outcomes at this level. And, calculating grant rates for the formal levels of review is complicated by the fact that CDCR's annual reports classify as "granted" any grievance that is either "granted in part" or "granted in full." In the Annual Report of the Inmate Appeals Branch for 2005–2006 (CDCR 2006), fully 55 percent of grievances were classified as "granted" at the first level of review, 44 percent were "granted" at the second level, and 5.8 percent were "granted" at the final level. Our research reveals, however, that the substantive grant rate is far lower than these statistics suggest. Our random sample of 459 formal grievances that reached the third level of review in 2005–2006 provides our best empirically derived estimate of grant rates, and the ratio between full grants and partial grants. Of this random sample of grievances that reached the third level, we found that only .2 percent were granted in full; 4.5 percent were granted in part; and more than 95 percent were denied. If we assume that this 1:22.5 ratio of full grants to partial grants roughly applies to earlier levels of review, we can calculate that of the 55 percent of "grants" reported by the CDCR at the first level, approximately 2.4 percent were granted in full; at the second level, of the 44 percent reported as "granted," an estimated 1.9 percent were granted in full. This low grant rate was affirmed anecdotally in our interviews with CDCR staff. When we asked staff who regularly respond to grievances to describe for us an appeal they had granted in full, several at first drew a blank. One appeals coordinator told us, "I can't think of one offhand because it's so rare." An examiner in the Inmate Appeals Branch said categorically, "I *never* grant in full. I only grant in part" (emphasis in original). When asked to estimate how many appeals they had dealt with, the modal response of these CDCR personnel was "thousands," yet 95 percent of them estimated they had fully granted fewer than 30.

Further, our random sample of grievances reveals that many "partial grants" are more symbolic than real. As an illustration, in several of these grievances inmates requested that there be no retaliation for their filing; the "granted in part" they received was based on the CDCR response that there would be no retaliation. In another example, an official told us of a prisoner who filed a grievance alleging staff misconduct and said he wanted the staff member disciplined, noting in passing that staff should be properly trained. His grievance was "granted in part"—the granted part being a statement that "All our staff receive training." Summing up the symbolic nature of partial grants, an examiner at the third level in Sacramento told us, "Almost every partial grant is pro forma."

While we cannot know real grant rates with precision, these statements from both CDCR staff and prisoners, as well as empirical evidence from our grievance sample, suggest that truly successful inmate appeals are relatively rare (cf. Milovanovic and Thomas 1989).²⁹ In addition to the remote likelihood of prevailing and prisoners' related cynicism, several other features of the prison landscape present potential disincentives or barriers to filing. For one thing, as we saw above, many of these men blame themselves for their imprisonment, and the literature suggests that people who blame themselves for a situation are unlikely to launch a claim (Bumiller 1987, 1988; Coates and Penrod 1980–81; Felstiner et al. 1980–81; Hendley 2010; Hoffmann 2003; Michelson 2007). Indeed, among the men we interviewed those who expressed self-blame for imprisonment were less likely to have filed a grievance (although the correlation is not statistically significant). Surprisingly, however, even among those who blame themselves, a clear majority have filed at least one grievance. Further, there is a statistically significant negative correlation between the belief that one has been treated fairly by the criminal justice system and filing a grievance. Once again, however, even among those who believe they have been treated fairly, the majority have filed (58.1 percent, compared to 81 percent of those who said they had been treated unfairly).

Prisoners are a highly stigmatized population, and by virtue of their imprisonment have been officially labeled troublemakers. Staying out of trouble is a persistent theme in their narratives

29. As Milovanovic and Thomas (1989:55) point out with regard to prisoner litigation, it is possible that some inmate grievances may result in relief even if they are not officially granted; however, this informal success rate is difficult to measure.

about managing prison life. Almost half of our sample (47.2 percent) spontaneously mentioned “staying out of trouble,” “keeping to myself,” and/or “minding my own business” as one of their operating principles in prison. A white man who had been in prison on and off for close to two decades and had become a Buddhist, told us he deals with any potential problems or things that are bothersome by staying out of trouble: “I don’t . . . get involved with anything I perceive [to be] negative. So, I, I’m trouble free” (#204).

Staying out of trouble and *perceiving* trouble are often conflated in the comments of these men who have been defined as troublemakers. When asked if there were problems for inmates, the man quoted earlier whose property and personal pictures disappeared after a transfer said, “Ya know . . . you can get in trouble if you want to, if you want to get in trouble, but you know, other than that it’s easy.” Asked again if there was anything bothersome, he answered, “No, cuz you can stay out of all that.” Later in the interview, when he was asked if he had ever used the law on the outside to solve problems, he said, “No, because [I don’t want to] put myself in a sticky situation. I see them other guys get caught up in sticky stuff, you know, but me, I try not to get caught up with that kind of stuff” (#10). Likewise, a young Hispanic man who had never filed a grievance said he had never filed a lawsuit either: “Nope. Stay as far away from the law out there as I can” (#160).

This population has *known* trouble.³⁰ They have suffered troubles (such as abuse, homelessness, and drug addictions), and been in trouble—often simultaneously and in ways difficult to untangle. One would think that this complicated relationship to trouble—both in itself and compounded by self-blame—would be a powerful force in the ability to name, blame, and claim. Yet, even among this group who spoke of the importance of avoiding trouble, the majority had at some point filed a grievance.

Potential barriers to filing go well beyond subjective factors such as self-blame, stigma, and the related concern about “trouble.” A central aspect of the “trouble” these men spoke of was retaliation by officials against prisoners who file grievances. More than 61 percent of inmates raised the issue of retaliation in their interview, sometimes in response to a question and sometimes impromptu. Further, in the last section of the interview when they were asked whether they agreed or disagreed with the statement, “COs retaliate against people who file 602s,” 70.5 percent either strongly agreed or agreed (in contrast to 17.9 percent who disagreed, and only one person who strongly disagreed).

A man who self-identified as “Mexican and Cuban,” in maximum security at Green Valley Prison on a 24-year sentence, has filed five grievances in just under five years in prison. He said he has not filed more, “Cuz it don’t work. And, if it does work, then they’re gonna take it out on you one way or another . . . They’ll get real vindictive . . . they’ll get back at you . . . It’s just too much, you know” (#163). A Mexican serving a life sentence at California Correctional Facility estimated he has filed 20 times, and said that he doesn’t file more “because I know there’s always consequences” (#115).

Many prisoners specified the consequences they may incur as a result of filing a grievance. A “Hispanic and white” prisoner at maximum security Green Valley Prison who has served almost 15 years and filed 20 appeals reported he has seen inmates retaliated against:

Because they file a 602, all of a sudden all their stuff, they transfer them somewhere and all of a sudden, their property’s missing. Gone . . . Ya, and they never see it again. And they put them on a bus and they transfer them up and down the state, and they never get off the bus. [Q: “What do you mean they never

30. An incident occurred during one interview that was a sharp reminder of how seriously “trouble” is taken in this population, and the sometimes unanticipated challenges of prison research. One of the co-authors of this article thought she had developed rapport with an inmate interviewee and happened to joke during the interview that she was “going to get in trouble” for something. Looking straight at her, and suddenly serious, the respondent said, “I don’t believe that.” She asked him what he meant, and he replied derisively, “*You’re* not going to get in trouble.” The emotional force of his response stunned her, and she apologized, “You are right. I’m sorry.” To which he said quietly, “So don’t say it” (#60). Clearly, he knew what getting in trouble was, whatever she was talking about was not it, and she had no right to speak playfully about such serious business.

get off the bus?”] They give them the bus treatment. [Q: “But they’ve got to get off eventually”]. You get off for like one day and you’re back on the bus in the morning . . . And I’ve seen that happen (#25).

A man in prison for two years on a DUI who had filed twice echoed the observation made by many others that a prisoner who files grievances may get his locker searched, or his property taken, or be transferred: “You better be ready to deal with the repercussions that go with it, and sometimes staff does retaliate, and you get your locker searched more, or you’re moved from where you’re at to someplace else, you know . . . it can be a hassle for you” (#2). A Mexican man who had been in prison for over a decade and who has filed three times was succinct: “They might roll you up. Send you somewhere else. Or they might come over here and just take whatever you have” (#6).

By far the greatest fear of retaliation had to do with jeopardizing release dates. Sometimes this was expressed in the context of discussing daily prison life. A man in prison on a drug charge explained that prisoners often endure abuse by guards in order not to jeopardize their release date:

I’ve seen somebody get roughed up [by a guard] over something really stupid . . . like picking up a tray that wasn’t his in chow. The cop brought him in the other room, slammed him up against one of the file cabinets and said, “You gotta fucking problem?” And gets all up in his face. He wants to go home like the next guy so he looks down at the ground and says “No” (#151).

Quoted multiple times above, the black prisoner in his forties (#103) was characteristically eloquent:

You got to remember that they [“cops”] will act like they’re cool like a snake. They’ll act like they’re cool with you and then they’ll bite you . . . that’s why I don’t get into much of anything. I try not to see a problem. I don’t let them see that I have attitude. Because that’s what they do, they test people, they see what you’re workin’ with and see if they can get under your skin. If they can, they’re goin’ to be on you. So you can’t let them see you sweat . . . Then you think “I’m really trying to go home, but this dude is just pushing, pushing, pushing,” and they do that, and they know they can get away with that . . . And that really tears you up because you get to thinking about, “okay, I want to see my granddaughter who I haven’t seen” . . . Oh, man, they can get under your skin (#103).

When discussion of release dates came up, it was usually in the context of filing grievances. An African American in his mid-twenties serving a three-year sentence for possession of a controlled substance said he had never filed a grievance. He told us, “I’m too close to the house, so most of the issues is not worth me filing a 602 and then . . . being a target by the COs” (#111). The white inmate who said that prison was like Groundhog Day said, “I just want to do my time and get out of here. I don’t need no extra time. They gave me quite enough, thank you” (#154).

A white man serving time for burglary who had only filed once said, “The more you push paperwork towards officials in these facilities the harder they can make it on you. Oh, they can make it extremely hard on you. They can actually take your date away” (#54). An African American man imprisoned on a drug conviction said he had filed about 15 times, and reported that he was punished for it: “I had a good job in the program office; it took me three years to work up to that position . . . and they just snatched it away from me, and they moved me here . . . scrubbing toilets.” He continued, “Yes, there was retaliation and . . . that’s why I’m not going home August 2nd” (#59). Another man in prison on a drug conviction who had never filed, explained, “You might have 20 years [to serve] and you go through an appeal and they might mess around and sentence you to life and you’re all messed up” (#153).

In this context of self-blame, stigma, cynicism, and vulnerability, it is all the more remarkable that the vast majority of these prisoners have filed a grievance, and many have filed multiple times. When we asked them why they use the grievance process despite its limitations and the repercussions for them, we often heard some version of, “It’s all we got” or “What else can I do?” But, even considering how serious the problems of prison life can be, how high the stakes for prisoners are, and the absence of any other mechanism for redress, it is unclear why this particular institutional population often overcomes the significant barriers to claims making that suppress it among other vulnerable and stigmatized people.

It might be argued that prisoners have a high grievance-filing rate simply because the PLRA requires them to exhaust internal remedies before gaining access to court. While this explanation is plausible, our data do not support it. When asked whether they had ever filed a lawsuit while in prison, only 14.3 percent of our respondents said they had—with many of these lawsuits appealing trial-related processes, competence of legal counsel, prison sentences, and other such matters not relevant to inmate grievances that contest conditions of confinement. Further, of the 217 inmate grievances these respondents described in detail, only 11 (5.5 percent) had been taken to court. It is possible that some prisoners file a grievance with the intention of getting access to court but later change their minds. Again, however, our data suggest otherwise. During the interviews prisoners very rarely mentioned utilizing the inmate appeals system to get to court, despite the fact that the interview schedule allowed ample opportunity for them to provide their views on the inmate appeals system, the function of the system, their motivations for engaging with the system, their experiences with the system, and the overall performance of the system. When asked if they had ever filed a grievance “to get to court,” 93 percent said they had never done so.³¹ In short, there is very little evidence to suggest that prisoners use the inmate appeals system primarily to get to court.

It might alternatively be argued that these men file grievances to exercise agency within the disempowering context of prison, to tell their story, or simply to get something off their chests. Positing such functions seems especially reasonable given that these men are very much aware they are unlikely to prevail in their grievances. However, they cannot by themselves account for the bulk of grievance filing. Indeed, over the course of sometimes lengthy and meandering conversations our respondents rarely touched on the psychological or symbolic rewards of appealing conditions of confinement; they were more likely to note the demoralization of losing an appeal than the subjective satisfaction of filing one.³² When asked directly, 35.7 percent answered affirmatively that they had filed at some point “to tell the story of what happened,” 10 percent said they had filed “to get something off their chest,” and only 5.7 percent said they had filed to “get back at a guard.”

The findings presented thus far prompt a more institutional analysis of claims making within prison walls. The following analysis focuses on “the rule of law” in prison.

Prison and the Rule of Law

A black inmate in a level 1 prison who has filed two appeals explained that he does it despite his fear of retaliation, because “right is right and wrong is wrong” (#23). Other prisoners referred not only to “right” and “wrong,” but more specifically to *law and policy*. Indeed, the narratives of these men were replete with references to Title 15 and the Department Operations Manual (DOM), copies of which are given to every prisoner who enters the system. These published documents are generally understood by prisoners and CDCR personnel alike to contain the official rules of prison life dictated by the CDCR (as opposed to the informal rules created and sustained by prisoners and officials). They indicate rights, obligations, and privileges, as well as describe processes and procedures.

An Hispanic man serving a three-year term for forgery quoted chapter and verse of Title 15. Asked about the problems of prison, he did not hesitate: “Our Title 15 says that we’re supposed to get three hours a week of yard time. We don’t get that, you know, so that’s a problem . . . That’s stated by the state of California, saying that’s our exercise time” (#58). Similarly, a Mexican

31. While the vast majority of these respondents clearly do not file simply to get to court, it is worth noting that any form of legal mobilization on a large scale—whether grievance filing or court appeals—is at first glance inconsistent with the prevailing disputing literature outlined earlier.

32. Milovanovic and Thomas (1989) suggest that, even when unsuccessful in court, the litigation of jailhouse lawyers may have symbolic meanings, constituting “an existential response to repression” (p. 56). It is an interesting argument, but difficult to test empirically. The data we have on inmate grievances include little evidence that such symbolic functions are predominate features of this form of legal mobilization.

inmate, interviewed while he was in a cage in administrative segregation,³³ cited Title 15 in explaining a grievance he had written: “The problem was the visiting. I had no visiting . . . For Title 15, whenever an inmate gets transferred from prison to prison, his visiting file is still good.” Later, he said everything prisoners have coming to them is spelled out in Title 15: “It’s written in the Title 15—Inmates got this coming, these proportions, this much food, so when we on our tray don’t get that same amount of food, [it’s a violation]” (#27).³⁴ A 63-year-old Mexican, who has served almost 30 years of a life sentence, summed it up at the end of his interview. He said he wanted people to understand that prisoners file 602s because “It’s a right that is being violated. We have a right to get certain things because the DOM says that we have a right to this and that” (#24).³⁵

Many of our interviewees emphasized that if they have to abide by the myriad rules and regulations that apply to them, staff should comply with their departmental policies, too. A black prisoner with a disability said he was told by a correctional officer (CO) that he could not have the “boots and braces” he was supposed to get, and asked us rhetorically, “Who is *he* to overshadow the guidelines?” (#30). When asked what was the most important 602 he had filed, another black prisoner serving over two decades on a two-strikes sentence said it was one in which staff had falsified documents relating to his classification status. He explained:

There’s rules and regulations for *us* to follow . . . and in this DOM *they* have rules and regulations to follow. So *they* just can’t come and do as they please and *we* can’t just do as we please because there’s rules set for both sides . . . And when *they* break their rules they should be penalized just as well as we should be. So if *we* break a rule, they punish us by a 128 or 115.³⁶ If *they* break a rule, *they* should be punished (#23; emphasis in original).

The man whose picture of his son was lost when he was in Ad Seg filed a citizen’s complaint and a 602 for staff harassment and disrespect. He explained, “Cause they has their rules too. So, you can’t call me out a name [just like] I wouldn’t call you out a name” (#110). The prisoner whose property disappeared after his transfer similarly explained that he consults the Title 15 when he files: “Yes, they break a rule, we go get that book [Title 15] and we write it up . . . They can’t break the rules, cuz that’s the rules” (#10).

Law and society scholars have noted that law permeates everyday life but often seems “remote,” “sit[ting] on a distant horizon of our lives” (Ewick and Silbey 1998:15). In contrast, law in prison is rarely invisible, taken-for-granted, or submerged; instead, its presence and its relevance for all things is relentlessly apparent. Not only are minute aspects of life inside prison shaped by legal officials, and exit is not an option—as in many other total institutions—but here the levers of law are conspicuously on display. We do not mean to imply that all legal rules are actually implemented in prison, nor that the gap between the law-in-the-books and the law-in-action is any less pronounced in prison than elsewhere. The point instead is that while law in everyday life is salient but largely subterranean, in prison it is emblazoned across the landscape.

It should not be surprising that prisoners mobilize law—or the proxy that is immediately available to them, the administrative appeals process—in this context in which law governs every aspect of their behavior and scrupulously rations out the goods that supply their daily needs. It is consistent with this interpretation that the maximum security prison—the total carceral institution that is most tightly governed by rigid strictures and explicit mandates—produces the most inmate grievances of all. Recalling Kruttschnitt and Gartner’s (2005) comparative work, we know that the microtrajectories of a prison affect inmates’ experiences, even as prison itself is the master text.

33. Because our respondents were randomly selected, some came from administrative segregation. In this case, the officers in the Ad Seg unit brought the respondent out of his cell dressed only in underpants and handcuffs and put him in a single-person cage in a conference room for the interview. Despite these restrictive and oppressive conditions—or maybe because of them—this prisoner seemed eager to talk to us.

34. A prisoner not in our sample told one co-author in another context, referring to Title 15, “It’s the Bible in here.”

35. There was remarkably little reference in these interviews to constitutional rights or any other legal documents besides the Title 15 and DOM.

36. These are the numbers on the forms used to document prisoners’ disciplinary infractions.

Just so, prisons vary according to the rigidity and palpability of their legal constraints—with the maximum security prison comprising the prototype of the total legal institution—but it is a defining feature of all prisons that they are in essence places of *lawful* captivity.

To sum up our argument thus far, despite a heavy dose of self-blame, cynicism, and concerns about retaliation, it makes sense that inmates in these total institutions that foreground law, engage with it.³⁷

Revisiting Retaliation, Deconstructing the Disputing Pyramid

This is not to say that internal and external impediments have no effect on grievance filing. As we have seen, even though a majority of those who blame themselves for their imprisonment have filed, there is a negative correlation in our sample between self-blame and the likelihood of filing. Further, most of the men we interviewed reported that they had at some point considered filing a grievance but did not. Sixty percent of those who had filed at least one appeal said that they had considered filing other times and decided not to.

Concern for retaliation permeates the narratives of many of our respondents, and a closer look at what they say provides a clue as to how that concern plays out in grievance filing. Most notably, these narratives suggest that the retaliation prisoners fear most is triggered by one type of grievance: complaints against staff. We heard again and again that grievances against staff (as opposed to, for example, living conditions, medical care, or missing property) are the most likely to result in retaliation. A black man serving a three-year sentence who had never filed an appeal said, “If you 602 somebody, or a staff, or something like that there’s gonna be retaliation . . . And there’s retaliation around here . . . It won’t be physical . . . and it might not be mental, but something’s gonna happen and you know somebody’s not gonna like you, so you’re just causing yourself to make an enemy” (#1).

The white man in prison for a DUI who had filed twice explained,

Sometimes they [grievances] blow up in your face. The staff retaliates, especially if you write them on staff . . . They’re in a position where unless you feel strongly about it, it’s a good idea just to . . . do what you have to do, but you have to be willing to go and take the extra crap that goes with it . . . So you better make sure you want to mess with that. That’s how I feel. Or what I’ve seen (#2).

A black inmate serving a lengthy sentence for burglary, who had filed two grievances, said he should file more: “I think about it each week, I should do it, I should do it, but I have to remember if I start a 602 [against a CO] . . . My house would be tipped upside down. It’s like opening up a can of worms” (#23).

A man interviewed in Spanish who had never filed a grievance in more than a decade of incarceration, said: “If you do a 602 the officers will send you to the hole. Once a new officer . . . he slammed the door on me and smashed my finger. And he broke it. And this part was dislocated . . . and there was a lot of blood. And they told me if I wanted to do a 602 I’d have to go to the hole” (#78). A white inmate housed in a special needs yard on a sex offense, who had filed only once in six years, explained why he did not file more:

You know sometimes you don’t want to [file]. You’re thinking you can become a troublemaker by doing 602s, they retaliate to that. Like when I finally filed it, it was a medical issue that was like going on two years and wasn’t resolved. I was like, man, I’ve got to do it . . . But like I said, the more you do it, the more the cops hassle you. If you’re writing a 602, *especially if you’re writing on officers*—they say they’re not allowed to retaliate but they do. They come tear up your locker or take your tv, whatever they do (#154; emphasis added).

37. Blackstone, Uggen, and McLaughlin (2009:664) found that in cases of workplace sexual harassment, the variable most positively correlated with legal mobilization was strong “horizontal worker-to-worker relationships,” suggesting that these relationships provide critical support for holding perpetrators accountable. While we have no direct evidence of this in this study, it may be that prisoners’ close living quarters, their shared status as prisoners, and the strong “horizontal” ties among them have an independent effect and/or may amplify the effect of the legal-institutional context.

A Mexican man in prison on a life sentence said, “One thing . . . that I’ve learned in prison is that you try your best—after so many years of bein’ in the system— never to 602 an officer. Medical or certain items . . . you know, up to a point, but when it comes to staff . . . you try not to because there’s *always* consequences” (#115; emphasis in original). Several people reported that when an inmate files a complaint against staff, the retaliation may come from another staff member. For example, a prisoner serving a ten-year term for drugs, who had filed three times, said, “I’ve seen a person file a 602 on an officer . . . He [the officer] will have another officer or friend just go through your stuff and take what they can . . .” (#103).

The formal process for staff complaints is slightly different than for other types of grievances, and the details of this process arguably compound prisoners’ perception of vulnerability. The official process for handling staff complaints was specified in a CDCR administrative bulletin sent to all supervisory personnel in 2003. The bulletin consisted of a seven-page “training module” followed by several attachments and a multiple-choice test. It began:

Staff complaints raise important issues with respect to how we manage our core responsibilities. Information developed through staff complaint inquiries can provide the Department critical information regarding its effectiveness at managing the inmate population . . . Since institutions are environments where allegations of misconduct may reflect attempts by inmates to manipulate or retaliate against staff, the right of staff to due process is critical to preserve the integrity of the system (CDCR 2003:2).

Because of concern for the rights of staff and possible repercussions for their career, and because of the assumption that inmates may “manipulate or retaliate,” the focus of the procedures specified in the Bulletin is on guarding against false charges. For example, inmate grievances in these cases must be accompanied by a “Rights and Responsibility” form signed by the appellant. The form states in part:

It is against the law to make a complaint that you know to be false. If you make a complaint against an officer knowing it is false, you can be prosecuted on a misdemeanor charge. (An inmate/parolee who makes a complaint against a departmental peace officer, knowing it is false may be issued a serious disciplinary rule violation in addition to being prosecuted on a misdemeanor charge).

This warning and its not so implicit assumption of prisoner prevarication up the ante on staff complaints, and in combination with prisoners’ concerns for retaliation—including the loss of their release date—may be definitive barriers to filing in these cases.

A close look at the types of grievances prisoners in this study reported filing bears this out. Remember that the problems most frequently mentioned by prisoners overall had to do with living conditions, medical care, staff disrespect, and property, in that order. In contrast, when focusing only on issues that were named as problems outside of the context of grievances, property was not in the top tier. The 217 grievances these men reported to us diverged from this pattern in two important respects: property was the *most* frequently reported grievance (19.4 percent of grievances concerned property), while complaints against staff took a distant fifth place (constituting fewer than 8 percent of the grievances), tied with concerns about programming. When we asked these men what their most *recent* grievance was about, only 7.2 percent reported that it was a staff complaint.³⁸ In other words, missing or damaged property—a less contentious issue with fewer potential repercussions³⁹—was less often named as a *problem* but became a much more common focus of *grievances* than staff misconduct, which was rarely claimed.

38. In addition to asking about their “most important” grievance; a grievance that was resolved at the informal level (if any); and a grievance that was granted (if any), we asked them to tell us about their most recent grievance. We assumed that the “most recent” grievances would be most representative of grievances in general because they are not selected on any substantive criteria other than least distant in time.

39. Interestingly, when we asked CDCR staff what kinds of grievances are easiest to handle, they said it was grievances that involve missing property.

Some of these men had filed grievances against staff despite the potential repercussions. Nonetheless, prisoners in this study left staff complaints on the ground floor of the disputing pyramid—naming them, but not claiming them—more often than other issues.⁴⁰ There is never a one-to-one equivalence between naming problems and claiming remedies, with people often simply “lumping it.” These interviews reveal not only that there is a significant amount of both naming and claiming within this prison population, but that there is a pattern to prisoners’ “lumping”—a pattern shaped in part by a widespread perception of reprisals against those who file staff complaints.

Discussion and Conclusion

The extant literature on disputing and legal mobilization suggests that American ideology includes an “ethic of survival” and “cult of competence” that militate against launching legal claims (Bumiller 1988; Felstiner et al. 1980–81); that people who blame themselves for a situation are unlikely to seek redress (Coates and Penrod 1980–81; Hendley 2010); and that the historically subordinated, structurally vulnerable, and/or socially stigmatized often eschew legal mobilization, even when they perceive a situation to be injurious (Bumiller 1988; Hoffmann 2003; Michelson 2007; Morrill et al. 2010). Legal consciousness studies that describe the ways disempowered people harness law as a “weapon of the weak” (Scott 1985) complicate this picture and reveal that the ability and willingness to mobilize law is contingent (Cowan 2004; Ewick and Silbey 1998; Lazarus-Black and Hirsch 1994; Lovell 2006; Merry 1979, 1990). While the focus on law as a tool of the suppressed reveals the complexity of people’s attitudes and their legal practices, the precise conditions under which subordinated people use that tool is rarely specified.

The current study advances our understanding of the contingency of legal mobilization by examining empirically the naming, blaming, and claiming process in the prison environment. While not contesting the general pattern reported in the disputing literature, nor minimizing the hurdles faced by the vulnerable in launching grievances, we see here how a particular institutional arena can enhance legal mobilization, trumping the forces that usually tamp it down. We thus draw attention to the contingency of the effects of ideology, self-blame, stigmatization, and vulnerability, on legal mobilization, but more precisely to the awesome power of institutional context.

California prisoners launch thousands of internal grievances annually, with over 15,000 reaching the third level of review every year. In our interviews with a random sample of 120 men in three California prisons, virtually all of our respondents identified a host of problems in prison, and almost three-quarters of them reported having engaged in the grievance process. Well over half of our respondents have filed *more* than one grievance and many have filed ten or more times. Some of our respondents blamed themselves for their incarceration and told us they believed they have been treated fairly by the criminal justice system. While these men are somewhat less likely than others to have filed a grievance, the majority of even this self-blaming group identified multiple problems and have filed at least one grievance. Similarly, many of the prisoners in this study voiced a commitment to “keeping to myself,” “minding my own business,” and “staying out of trouble.” And, almost two-thirds of these men mentioned concern for retaliation. Yet, even those who were intent on staying out of trouble and expressed a concern for retaliation identified problems and most had filed some kind of grievance. There are patterns to these men’s grievances, and the patterns suggest that they are not immune to the considerable pressures of prison. Most notably, these men reported filing on property more often than anything else, and more rarely filed against staff—a category of grievance they said was most likely to result in serious retaliation, such as extensions of their release date.

40. The influence of potential retaliation on inmate grievance filing is not unique to our sample of California prisoners. A recent study of the grievance process in the federal prison system reveals that of the inmates who “had a problem but didn’t file,” the single most common reason was “afraid of staff retribution,” with 18 of 53 respondents citing this factor (Bierie 2011).

We argue here that their extensive use of the grievance system has to do not only with the considerable array of problems inmates confront, but also with the hyperlegal nature of the total institution that holds them. As Justice Stewart said, for these prisoners the state prison system is their “landlord,” “employer,” “tailor,” “neighbor,” and “banker.” But, the state is also their legal “captor” and as such, law personified. In this institutional context, law is an unavoidable master text. As a man serving time for robbery put it, highlighting the salience of legal rules, “There’s rules set for both sides;” or, as another said emphatically, “They can’t break the rules, cuz that’s the rules.”

Elizabeth Hoffmann (2003, 2005) is among the few previous scholars who has empirically examined how variation in the institutional context affects legal mobilization. Focusing on two taxicab companies, Hoffmann (2003) found that more internal grievances were filed in the company with a flatter workplace hierarchy. Consistent with the literature on disputing and vulnerability, she argues that workers who are institutionally empowered may be more comfortable making claims. In light of her findings, the ability and willingness of the men in the current study—in one of the most extreme hierarchical settings imaginable—is all the more remarkable and attests to the decisive influence of distinctive features of the legal-institutional environment. While it was not the goal of this project to examine systematically the filing differences across these three prisons, it is noteworthy that the maximum-security prison, which is the most overtly regimented by law (and has the most pronounced hierarchy), yielded the most grievances.

If we are to advance our understanding of the conditions under which people recognize injurious conditions and launch claims, we need to move beyond broad-brush patterns to explore empirically the precise institutional and structural settings that facilitate and/or inhibit legal mobilization, as we have begun to do here. Future research might add further detail, for example specifying the relationship—only hinted at here—between racial identification and legal mobilization and the ways distinct institutional and social environments may enhance claims making by historically subordinated racial groups. More broadly, while it is difficult to imagine an institution as overtly regimented by law as the prison, if we think of a continuum along which institutions can be sorted according to the overt or subterranean quality of their legal regimen, it may be possible to document in more detail the relationship between this aspect of the institutional environment and legal claims making.

Faced with an array of problematic conditions and confronted with daunting internal and external obstacles, most of the men in this study have sometimes scaled the pyramid of disputes. Across California, every year tens of thousands of prisoners do so, filing grievances contesting the physical injury, moral insult, and other indignities of prison life. At one level, the U.S. Supreme Court’s finding in *Brown v. Plata* (2011) that conditions in California prisons violate the Eighth Amendment’s prohibition on cruel and unusual punishment is an affirmation of what prisoners have been reporting for years through their grievances. At another level, the Court’s finding reveals the demonstrable inadequacy of the inmate appeals system despite prisoners’ repeated efforts to hold the authorities accountable. We should perhaps not be surprised that these prisoners’ grievances, in which the CDCR effectively acts as both defendant and judge, are rarely granted. While prisoners may be empowered in this legal institution to name, blame, and claim, in the absence of systemic change in how their grievances are processed—at a minimum, the establishment of third-party respondents—this steep pyramid of disputes is unlikely to alter substantially conditions on the ground, where cell temperatures can exceed 100 degrees and dog kennels are air-conditioned. Until then, as the prisoner quoted in the epigraph said, “They decide. You just complain.”

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