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*Carceral Citizenship in Latin America and the Caribbean*

Citizenship regimes in Brazilian prisons:  
Hybrid, unjust and weak

*Jean Daudelin*

The Norman Paterson School of International Affairs, Carleton University

*José Luiz Ratton*

Universidade Federal de Pernambuco

Abstract

For Brazilian inmates, prisons are mostly spaces of rights denial, above and beyond their formal condemnations. Most, nonetheless, still enjoy some rights. This paper examines the modalities of allocation and the range of those rights. It understands citizenship as a bundle of rights whose scope and quality are determined by the terms of the bargains through which those rights are allocated. These bundles, together with the governance arrangements that define and enforce them are in turn understood as citizenship regimes. The paper examines three regimes that are common in male Brazilian prisons: one regime that is fully controlled by the state, and two that are hybrid, involving both state authorities and, in one instance, criminal organizations (factions), and in the other, chosen inmates (keyholders or *chaveiros*) who are vested of governance authority by prison administrators. The overall system they conform is a composite of state and non-state rights enforcement arrangements. The allocation of rights it produces is deeply unequal. And the range and quality of the rights enjoyed by the vast majority of inmates is narrow and poor. *Keywords:* Citizenship regimes, rights, criminal organizations, prisons, Brazil.

Resumen: Regímenes ciudadanos en las cárceles brasileñas: Híbridos, injustos y débiles

Para los presos brasileños, las cárceles son sobre todo espacios de negación de derechos, más allá de sus condenas formales. No obstante, la mayoría sigue disfrutando de algunos derechos. Este trabajo examina las modalidades de asignación y alcance de esos derechos. Se entiende la ciudadanía como un conjunto de derechos cuyo alcance y calidad vienen determinados por los términos de los acuerdos a través de los cuales se asignan dichos derechos. Estos conjuntos, junto con los mecanismos de gobernanza que los definen y hacen cumplir, se entienden a su vez como regímenes de ciudadanía. El documento examina tres regímenes comunes en las prisiones brasileñas masculinas: un régimen totalmente controlado por el Estado y dos

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regímenes híbridos, en los que participan tanto las autoridades estatales como, en un caso, organizaciones delictivas (facciones) y, en el otro, reclusos elegidos (*chaveiros*) a los que los administradores de la prisión confieren autoridad para gobernar. El sistema global que conforman es una combinación de mecanismos estatales y no estatales de aplicación de los derechos. La asignación de derechos que produce es profundamente desigual mientras que la gama y calidad de los derechos de que disfruta la inmensa mayoría de los reclusos es limitada y deficiente. *Palabras clave:* Regímenes ciudadanos, derechos, organizaciones criminales, prisiones, Brasil.

## Introduction

Prisons in much of the Global South are dreadful, violent places, overpopulated, under-staffed and underfunded. Brazil is a case in point. The country's incarceration rate has almost tripled over the last 20 years to reach 381 per 100,000 and, with more than 800,000 inmates, its prison population is now the third largest in the world, after the United States and China (World Prison Brief, n.d.). Prison capacity has not kept up: in December 2021, according to official data (INFOPEN, 2021), there were 573,000 places for the 833,000 people in the system and the ratio of guards to inmates was 1 for 12, which means at best 1 for 36 per shift. According to a recent study of five Brazilian states, prison expenses represented barely 1.4 per cent of their respective budgets (Plataforma Justa, 2022). These averages hide huge discrepancies: overpopulation reaches well over 200 per cent in several large prisons and ratios of 1 guard to 500 inmates are commonplace in male penitentiaries during night shifts (Darke, 2018; Nascimento, 2021). Living conditions in most of them are dreadful and inmates' rights routinely violated by prison personnel and other inmates (Human Rights Watch, 2015). Their partners and families are extorted, physically abused and humiliated (Biondi, 2010). Periodically, riots break out that involve mass killings and mutilations among inmates (Salla, 2006; Rodrigues & Lopes, 2017) or brutal repression and summary executions by police shock troops (Varella, 1999). Writing in 1984, as the military regime was ending, Edmundo Campos Coelho (2005) described the Rio de Janeiro prison system as "the devil's workshop". By all measures, three decades of democracy have made things even worse.

How can any substantive citizenship be possible in such a context? Can any right be effectively claimed in those conditions and, if so, by whom, and how? Hannah Arendt famously defined citizenship as "the right to have rights" (1958), a right that states confer, and deny. Asking about citizenship in Brazilian prisons forces one to expand on her intuition on two counts. First, to the extent that inmates, while denied full freedom, can nonetheless have certain rights, citizenship should be understood as a more or less extensive "bundle of rights", to be therefore assessed along a continuum, not as something that one enjoys or not, but instead as something that one can enjoy to a given extent. Second, focusing primarily on inmates' rights, and only then asking about the agents that enforce them, frees us from tying citizenship to nationality – as Arendt does – and

therefore to the state, a particularly useful move in the country we examine, where the state primarily appears as an agent of rights violation (Neves, 1994; Coelho, 2005; Souza, 2004; Holston, 2008). Doing so also acknowledges that inmates often rely on other agents, including criminal organizations or one another (Biondi, 2010; Darke, 2013), on their own, or along with the state (Jaffe, 2013), to protect at least some of their rights and, therefore, to claim a modicum of citizenship. In addition, a focus on citizenship as a bundle of rights implies that while participation and a sense of belonging (Miller & Stuart, 2017; Parker & Weegels, 2023) may play a role in people's ability to secure rights—and they certainly do in some of the cases we examine—they are by no means sufficient or even necessary conditions thereof: inclusive and participatory political communities are neither always capable of guaranteeing a significant bundle of rights, nor are they the only possible “rights-enforcers”.

Building on the anthropology of citizenship (Holston, 2008; Jaffe, 2012, 2013) and on the analysis of property rights done by legal scholars (Clarke & Kohler, 2005), institutional economists (Libecap, 1989; Alston, Libecap & Mueller, 1999) and law and economics scholars (Richman, 2017; Fitzpatrick, 2011; Leeson, 2014; Kennedy, 2011), we look at citizenship as it manifests empirically in Brazil's prison system. To do so, we distinguish and describe three broad “citizenship regimes” (Holston, 2008) that govern the allocation of rights in most Brazilian prisons. In the country's extremely diverse national prison system, inmates' rights are mostly but not always heavily curtailed. Such rights, constrained to begin with through incarceration, are furthermore allocated unequally and, with few exceptions, most rights that end up being enforced remain fragile.

The first section outlines our analytical framework, which introduces the parameters we use to describe and compare inmates' citizenship regimes. It lays out the logic that underly such regimes, which we trace to the bargains they embody, first between the inmates and the agents that, to varying degrees, enforce and deny their rights, but also between those agents. In the second section, we present three prominent regime types that one can find in Brazil's male penitentiaries: state-dominated-regimes, “factions-led regimes” and “keyholder” regimes. A synthetic conclusion brings forward the dominant traits of the resulting system: its composite character that includes hybrid components, with both the state and inmates as agents of rights enforcement—and denial—sometimes at the same time; its deeply unjust nature, as it builds on, and enforces, profound class and race inequalities; its weaknesses, in terms of the range of rights most inmates can enjoy, in terms of the quality of those rights (the extent to which they are socially valid), and in terms of their resilience (the probability that the bundle of valid rights enjoyed by given inmates can be sustainably enforced over time); and finally the peculiar relationship our cases reveal about the linkages between belonging and rights.

This article is part of an ongoing research program on the governance of prisons and its breakdown, with a focus on the Northeast region of Brazil,

particularly the state of Pernambuco. It brings to bear some statistical data on that prison system and insights from scholarship on the prisons of other regions of Brazil. It also relies on informal discussions and observations during prison visits as well as 58 interviews that we have done with current participants in illegal markets, former inmates, guards (now called *policia penal*), lawyers, prison administrators, police agents, prisoners' rights advocates, as well as public officials with responsibilities in public security and the management of Pernambuco's prisons. These interviews have been taking place between 2015 and 2023. The data was collected under a protocol approved by Carleton University's Ethics Board (Protocol #103339). Although this material has been collected over the last eight years, we have validated older material with more recent scholarship and interviews and think that the article gives a good snapshot of the current state of the regimes we discuss.

### **Inmates as citizens: Rights regimes in prisons**

Through the lens of property rights theory, a right can be understood as a valid claim over a particular set of "things" (Clarke & Kohler, 2005; Libecap, 1986; 1989), that is, any object, material or not, over which a claim can be made, from a piece of land, political power or a melody, to children, the space behind seats in planes, or the ability to play loud music or walk around naked. These "things" therefore include freedoms, whether negative – "freedom from" – or positive – "freedom to" (Cohen, 1927; Berlin, 1958). Rights vary according to the subject of the claims they embody (who claims), the object of those claims (what is being claimed), their duration, and their quality (the extent to which the claims are empirically valid). A rights regime, then, is a set of interrelated claims over a set of things, along with the institutional arrangements that define and enforce them.

Arendt's seminal contribution was to identify state citizenship as a gateway right, as a condition to making further rights claims. Her discussion paints a vivid picture of the dreadful implications of statelessness, one that is at least as relevant today as it was in what she called "the age of totalitarianism" (Arendt, 1958). However, the commonplace violation of the rights of their citizens by states themselves shows that formal citizenship, which is tied to "nationality", is not a sufficient condition for access to *any* right (Neves, 1994; Souza, 2003; Holston, 2008). Conversely, the fact that a number of rights are enforced by non-state actors – for instance customary land rights or claims over political rights based on "ethnic citizenship" (Mamdani, 1992; Jackson 2006; 2007) – shows that citizenship as nationality, as conferred by a particular government, is not a necessary condition for the enjoyment of rights. Finally, rights are often defined and enforced through hybrid governance arrangements, with empirical citizenship the product, at once, of the action of several agents (Jaffe 2013; 2012).

In this article, citizenship will be narrowly understood as a more or less valid claim to a given bundle of rights (Schlager & Ostrom, 1992), whether those are enforced by state agents acting legally or illegally (Rivard Piche, 2017), non-

state agents, or varied “entanglements” (Jaffe, 2013) of those, and operationalized as a continuum taking into account the range and the quality of the claims over things and freedoms that the subjects of those rights are able to secure. We do not find it useful to expand its conceptualization to a broader set of “building blocks” (Lister, 2007) defining some kind of “real” citizenship (Neale, 2004, p. 9), compared to which empirical citizenship is always wanting. Focusing strictly on the enforcement and denial of rights illuminates instead a dark side of citizenship, always present empirically but arguably inherent to the enforcement of the rights claims of some, “against the whole world” (Clarke & Kohler, 2005).

Inmates’ bundles of rights are, by definition, constrained. A whole set of freedoms are denied to them by law, but they remain formal subjects of rights, and the state and its agents, who are charged with denying them some rights, are also, by law, responsible for the enforcement of their other rights. In practice, the set of rights that are denied and enforced may or not be consistent with the letter of the law. Understanding “really-existing” inmates rights – to paraphrase Erich Honecker (Bahro, 1978) – therefore calls for the examination of the claims that are effectively denied and enforced, and of the agents and mechanics of such denial and enforcement. More specifically, the analysis of citizenship, whether it regards inmates, refugees, or a country’s nationals, involves the identification of the characteristics, range and quality of the rights enjoyed by those claimants, and of the modalities through which those rights are defined and enforced. It consists in the specification of citizenship regimes, understood, for prisons, as sets of valid claims over things, including freedoms, that inmates can make, along with the institutional arrangements through which such claims are enforced.

In addition to this characterization of citizenship regimes, it is useful to enquire into the implicit or explicit “bargains” on which they are based, which, we think, hold the keys to their variation between and within countries. Citizenship is indeed commonly understood as the bestowing of rights by a political community to its members, in exchange for their fulfilling a given set of duties: “[a] citizen is a member of a political community who enjoys the rights and assumes the duties of membership” (Leydet, 2017). While the specific terms of the implied bargain may vary, citizens are generally expected to obey their community’s rules and to contribute, in “blood or treasury”, to its maintenance, in exchange for which that community will enforce a given set of claims agreed upon with its members: rights on one side, responsibilities – including obedience to the community’s rules – and the payment of some kind of tax on the other.

Now, there is no reason to presume that all rights claims are enforced by an idealized political community or a state acting as its agent. An outside ruler may well be the main agent of rights allocation in a particular place. In addition, for instance under two of the regimes we examine in the paper, some of the implicit or explicit bargains that are key to prison order and to citizenship involve the state and non-state governance agents, not inmates themselves. The hybrid regimes (Jaffe, 2013) they make up sometimes reduce the latter to mere “takers”

of the rights delved out by those agents. In other words, like the “private sphere” long ago deconstructed by feminist scholarship, really-existing political communities are sites of power and the citizenship that they define are conditioned by those hierarchies.

In sum, state and non-state actors, on their own or “entangled”, and as agents of a political community or not, only enforce claims over things and freedoms to varying degrees. While Brazil has been repeatedly shown to be a land of unequal, partial, and differentiated citizenship (Neves, 1994; Souza, 2004; Caldeira, 2001; Holston, 2008) we will now see how its prison system produces and houses extreme version of such sub- and super-citizenships (Souza, 2004), with widely varying scope and practical validity.

### **Citizenship regimes in Brazilian prisons**

It makes little sense to speak of Brazil’s prison system as a homogeneous citizenship regime that would regulate the enjoyment or denial of rights to all of the country’s inmates. Brazilian prisoners are held in a large number of institutions – 1533 in December 2022 (Secretaria Nacional de Políticas Penais, n.d.) – whose level of financing, physical characteristics, staffing, degree of over-population and modalities of governance vary widely. In part for these reasons, the rights claimed by inmates, as well as the arrangements that enforce them, what we call citizenship regimes, also vary. Here, we examine a small set of regime types that encompass the most common arrangements that have until now been documented for male prisons. Such a narrow sex focus is regrettable – and our broader research program intends to address it – but given our current dataset, conflating male and female regimes would have been misleading. Our overview neglects other citizenship regimes, and several nuances to those we examine, that are linked in part to the involvement of several other actors with significant influence in parts of the prison system (Macauley, 2013, 2015; Darke, 2014). Churches, both the Catholic Church and several Evangelical denominations, in particular, have a presence inside most prisons and monitor and pressure authorities and prison administrators in favour of inmates’ rights. The action of social movements, human rights organizations, both domestic and international, associations of inmates’ families, judges, activist public prosecutors as well as defence lawyers and their associations, have an important influence on the range and qualities of the rights that inmates can enjoy. The picture we draw, while we think that it faithfully describes the situation of most male Brazilian inmates, therefore nonetheless considerably simplifies a very complex reality.

#### *State-dominated regimes*

While recent literature has emphasized the role of criminal gangs in the “ordering” of particular prisons and of whole state-level prison systems (see the next sub-section), the state itself, legally and illegally, by action and by omission,

remains a central actor in the allocation of rights among inmates, that is, at once, in both their provision and denial. In some instances, it is the main agent of that allocation. In the system as a whole, however, it is the exclusive player in the initial assignment of individuals to more specific regimes, the main agent of a foundational triage process that determines who will be the main agent of rights enforcement for inmates and, to a large extent therefore, the range and quality of rights that they will be able to effectively enjoy, as well as the price, in obedience and taxes, that they will have to pay in exchange. Part of that process is set in law, mainly in the provisions of the Penal Execution Code (Law 7.210) and, to a lesser extent, of the Penal Process Code (Decree Law 3.689). It is worth briefly looking at key sections of those laws to understand the parameters that the state itself establishes for inmates' rights.

The Penal Execution Code establishes that “[t]o the convict and to the inmate will be guaranteed all rights not affected by the sentence or by the law. No racial, social, religious, or political distinction will be made” (Art. 3). The code specifies the various types of assistance that the state commits to provide inmates: material (adequate space, food, hygiene products), health, legal, educational, social (for re-integration purposes) and religious (Chapter II). In a section explicitly devoted to the rights of inmates (Chapter IV Section II), the code states that authorities must respect their physical and moral integrity, and lists sixteen guaranteed rights, among them a formal right to the types of assistance mentioned above, the right to work, to social insurance, and the right to visits from partners, family and friends. The list includes the right to “equal treatment outside the requirements of the individual sentence” (Art. XII).<sup>1</sup> To these rights are attached a set of duties (Chapter IV, Section I) combining obedience to various prison rules, and compensation to victims, and to the state – via discount on the salary paid for work inside prison facilities – for the spending incurred as a result of incarceration, albeit only “when possible – (Art. VII and VIII). The law thereby sets the terms of a formal citizenship bargain that applies to inmates, involving the guarantee of rights on the one hand, and duties of obedience and, “when possible”, the payment of what can clearly be understood as a tax.

The law also sets forth a series of sanctions for inmates' violations of their duties (Art. 44 to 52), consisting in the suspension of some rights, except for the guarantees regarding their physical or moral integrity. Inmates guilty of serious violations of prison rules, or objects of “well-founded suspicions” of membership in a criminal organization, “whether or not serious crimes were committed”<sup>2</sup> (Art. 52), can be put under the so-called “Differentiated Disciplinary Regime” – or RDD in Portuguese (Macaulay, 2015). The RDD involves incarceration in an individual cell for 22 hours per day, with the other two hours spent, to the discretion of prison authorities, with at most three other people who are not known to be members of the same criminal organization. Visitation rights are also limited to once every two weeks, by two people, with constant oversight and without physical contact. The regime can be imposed, with judicial

approval, for a maximum of two years, though the sanction can be reimposed indefinitely by prison authorities for the same set of violations or “suspicions”.

While the RDD regime can be enforced at the state level, it is mostly confined to the small Federal Penitentiary System (*Sistema Penitenciário Federal*, or SPF), which includes five maximum security units in five different states and can be understood as a fully state-led governance regime. Inspired by the “Supermax” institutions in the United States, federal prisons are characterized by high staffing levels, absence of overcrowding, individual cells, constant monitoring, strict regulation of visit procedures, and limited interaction between inmates. The latter are extremely isolated, and their everyday activities are under intense control. The SPF was created to house inmates considered highly dangerous because of their involvement with criminal organizations (*facções*) whose organizational and fighting capabilities can overwhelm often fragile state-level penitentiary systems. These facilities do not house a significant proportion of the country's inmate population – 499 altogether in December 2022 (Secretaria Nacional de Políticas Penais, n.d.) – but, because they hold key members of the leadership of the largest Brazilian criminal organizations, they function as safety valves for the national system, in particular in the case of rebellions in state penitentiaries (Da Costa, Ribeiro, M.L., 2017). From a citizenship standpoint, and to the extent that the federal system mostly runs under the RDD, its inmates see their rights confined to the most basic and narrowly-defined protection of their physical integrity.

The Penal Execution Code specifies the conditions under which violations of inmates rights can take place. Aside from the RDD, Art. 41 states that prison directors can suspend at their discretion, though “with motives”, the right to an adequate balance between work, leisure and rest, and the rights to visits and other types of contacts with the outside. Overall, this is a rather minor violation of the bargain, though one that can easily be abused.<sup>3</sup> The Penal Process Code (Decree-Law 3.689), however, includes a disposition that directly contradicts Article 3 of the Penal Execution law and its claim that no racial, social, religious, or political distinction will be made between inmates. Art. 295 establishes that “special prisons or quarters” will be used to house, until all available appeals are exhausted, a specified class of people, among them ministers, governors, members of Congress as well as state deputies, military officers, magistrates, mayors and municipal councillors, religious ministers, and holders of university diplomas.

Lawyers are similarly protected through the Statute of Advocacy and of the Brazilian Bar Association – *Ordem dos Advogados do Brasil*, OAB (Law 8906/94), which prevents Bar members from being held, until final judgment, except in facilities considered adequate by the OAB or, in the absence thereof, under house arrest (Art. 7, par. V). These dispositions regularly emerge in the media coverage of the abstract possibility, or of the occurrence, of prison sanctions for middle and upper-class Brazilians, whether they be models, like Gisele Bündchen,<sup>4</sup> bankrupt ex-billionaires, like Eike Batista,<sup>5</sup> or the politicians and



heads of companies involved in the massive Lava Jato corruption scandal, like Marcelo Odebrecht, former CEO of one of the country's – and Latin America's – largest engineering firms. The caveat limiting the special prison privilege to detention preceding the exhaustion of the full set of appeals is largely misleading, moreover, as its beneficiaries typically get reductions and the right to spend much of their final sentence under house arrest.<sup>6</sup> It is no wonder that, in Pernambuco for instance, males with any university education (including incomplete degrees) represented only 1.5 per cent of the state's inmates or that only 6 per cent of them self-identified as white (SISDEPEN, 2014-2022).

The formal citizenship bargain, in other words, is already differentiated, belying any claim of non-discrimination on the basis of class. In addition, the situation of really-existing prisons shows the state to violate, for the vast majority of inmates, a number of the rights it commits to enforce. To take the example of Pernambuco and considering the guarantees of adequate lodging and the protection of inmates' physical integrity, occupation rates in male prisons – calculated on the basis of official capacity data – averaged 259 per cent in the last five years. Death rates, for a population made up at 60 per cent of men under 30, was more than 40 per cent higher than for the general population, including its oldest cohort, at 10 vs 7 per 1000 (SISDEPEN, 2017-2022).

The massive overpopulation of the country's prison system overwhelms the ability of the state to effectively play an active role in the enforcement of most inmates' rights – or for their “everyday” violation, for that matter. Crucially, however, government agents assume a triage function by directing incoming inmates to this or that institution, section, or pavilion, thereby determining under which citizenship regime they will end up living. We will now examine two such regimes. In the first, large criminal organizations, commonly called “factions” in Brazil, take over the internal governance of a prison – and in some cases of the whole prison system of a state – and become the main agent of inmates' rights enforcement and denial. In the second, which is present in several states of the Northeast and are dominant in Pernambuco, “keyholders” (*chaveiros*) are informally licensed by prison administrators to govern specific sectors of a prison, giving them a prominent, if not typically exclusive, role in rights enforcement and denial.

### *Factions-led regimes*

While the “criminal governance” (Arias, 2006) of prisons is a global phenomenon (Skarbek, 2021), it has taken a particularly visible place in Brazil, where a “faction” – the term commonly used in Brazil to designate criminal organizations – the *Primeiro Comando da Capital* (PCC, literally First Commando of the Capital), has assumed a central place in the management of a large number of detention centres in Brazil's largest state, São Paulo, and beyond (Adorno & Salla, 2007; Biondi, 2010; Dias, 2011; Feltran, 2018; Manso & Dias, 2018; Lessing & Willis, 2019). The control exerted by the PCC in the prisons of São Paulo,

Paraná and Mato Grosso do Sul represents the clearest and purest example of “criminal governance” in Brazilian prisons. The PCC emerged from within prison institutions and expanded beyond them to become a major criminal organization. Within prisons, it reorganized social relations between inmates, creating recruitment systems and imposing quasi-compulsory loyalty, absorbing, or eliminating the competition, and establishing effective and predictable mechanisms to control violence. It also centralized the demands of inmates, presenting itself as their representative and chief negotiator with prison administration. The PCC, as an organization, was responsible for a process of pacification in São Paulo’s prisons, creating a type of internal order that presents significant advantages, as well as challenges, for state prison administrations and for inmates. In addition, leveraging its control of the prison system, the PCC has also contributed to the reduction of violence in the peripheries of São Paulo state’s largest cities, a process that mirrors the reduction and rationalization of violence within prisons (Nunes, 2011). Factions have multiplied in Brazil over the last 25 years, and while none of them has been as successful as the PCC, both as criminal organizations or in their hold over prison systems, they have become crucial players in the governance of prisons and, therefore, in the citizenship regimes that prevail in them.

The extent to which factions-led regimes enforce citizenship rights varies between extremes. The establishment of these regimes, sometimes in the context of violent competition between factions, is often traumatic and deadly. It typically involves the physical conquest of the internal space of carceral institutions and, to be most effective as a rights regime, the extension of this control over a whole prison or even the prison system of a whole state. Such a monopoly is a huge asset as it provides tremendous leverage to the faction that establishes it: because the administration of prisons is almost exclusively a state-level responsibility, taking over the whole system enables factions to extend their control from the prisons themselves to the illegal activities that take place outside of their walls: disobedience or a refusal to contribute financially to the faction’s activities – say by buying tickets for a “raffle” – is certain to be punished if – once? – a particular criminal is arrested and, thereby, put at the mercy of the faction that controls the prison (Lessing & Willis, 2019). Such a monopoly can be extremely lucrative as it transforms the illegal economy of the whole state into the faction’s tax base and, as result, competition for prison control is ferocious. Brazil’s recent criminal history is therefore dominated by faction wars: between the PCC and the *Comando Vermelho* (CV, or Red Command) in Western Brazil, between the CV and the *Amigos dos Amigos* (AdA, Friends of Friends), the *Terceiro Comando* and *Terceiro Comando Puro* in Rio de Janeiro, between the *Familia do Norte* (FDN, Family of the North) and the PCC in the middle Amazon, between *Okaida* (from Al Qaeda) and *Estados Unidos* in Paraíba, and so on (Feltran et al., 2022). Such wars take place in the streets, but also within prisons themselves where riots often lead to extremes of violence and cruelty, including torture, mutilation, decapitations, and dismemberment.

In theory, the monopolistic arrangements that result, whether at the pavilion, prison or prison system level, could be largely or exclusively exploitative with very few rights beyond a modicum of personal safety being exchanged for total obedience and high levels of taxation. In practice, however, faction rule has proven to rely to a large extent on the construction of a legitimacy built precisely on a broad-based citizenship bargain. Detailed long-term ethnographies (Biondi, 2010; Dias, 2011; Feltran, 2018) have documented the remarkable extent to which the PCC, in particular, was able to construct a political community that transcends, in its representation of itself and in practice, the narrow mutuality of street gangs or the cold protection rackets of mafias. Without neglecting a “business side” that has made it the largest, most powerful, and richest criminal organization in South America (Manso & Dias, 2018), the PCC has devoted part of its resources and used its power to provide protection to, and satisfy the basic necessities of inmates and, notably, to their families.

Once consolidated, in other words, these regimes become very stable and typically associated with lower levels of violence, better satisfaction of the basic needs of inmates and, often, a level of respect, self-respect and dignity that inmates did not enjoy under other citizenship regimes, whether inside or outside prison. In contrast to state regimes, and while the organization itself has a strict hierarchy, faction-based regimes do not appear to be discriminatory as the only identity that matters to enjoy rights is to be a member of “the crime world” (Biondi, 2010; Dias, 2011; Feltran, 2018). From that standpoint, the PCC's practice looks more consistent with Article 3 of the Penal Execution Code, about racial, social and other discrimination, than the state system the Code is supposed to regulate.

Faction rule, however, can also imply that rights formally guaranteed under state laws are denied – the death penalty, for instance, is typically “legal” under such regimes – and the range of liberties that it guarantees, of organization, expression, or representation, can be extremely narrow (Dias, 2011; Dias & Salla, 2013). Attempts to understand Brazilian prisons through the lens of Goffman's state-controlled “total institutions” or of Foucault's Benthamian panopticon (Goffman, 1961; Foucault, 2015; Bentham, 2011), which would involve a total denial of autonomous claims on the part of inmates, have been challenged (Darke & Karam, 2016; Macaulay, 2013): in most prisons, the state panopticon is indeed “blind” – in Jorge Nunez' marvellous formulation (Nunez & Fleetwood, 2017; Nunez & Herrera, 2014). Factions' regimes, however, usually involve extensive and in some cases extreme level of control over inmates' lives. Biondi (2010) has shown how pervasive and tight the PCC's control over the slightest dimension of inmates' lives can be. Such level of monitoring and control could be seen as a non-physical panopticon every bit as intrusive and powerful as Bentham's. Even when the state withdraws to some degree, in other words, the regime that results may very much conform to dos Santos' (1987) “hyper-regulated” citizenship.

While, as far as we know, there is no record of *regular* negotiations or bargaining between state agents and the PCC<sup>7</sup> or other factions, this citizenship regime is structurally similar to the hybrid regimes that Jaffe's documents in the sectors of Kingston, Jamaica, ruled by criminal "dons" (Jaffe, 2012; 2013). There is a de facto informal "licensing" of governance responsibilities to the factions that dominate prisons. Even in those regimes, however, the state remains a key agent of rights enforcement and denial, to begin with through incarceration itself, but also through the triaging – and potential transfer – of inmates, as well as, periodically, through violent interventions in prison life. In these cases, at least, "criminal governance", and the "criminal citizenship" that results, are very much misnomers. Jaffe's hybrid governance and, therefore, hybrid citizenship are clearly more apposite. Factions-led regimes probably offer the widest and most secure bundle of rights currently available to poor male inmates, that is, to the vast majority of prisoners. However, the involvement of the inmates themselves in the governance of prisons, and therefore in the enforcement and denial of rights that constitute a given citizenship regime, is by no means a guarantee or even a rough index of the range and quality of the rights that inmates can effectively claim. Rights denial can also prevail when the governance of prisons is largely in the hands of inmates themselves. A case in point is Pernambuco's *chaveiros*-led regimes.

### *Keyholders' regimes*

Under-financed and under-staffed, most mid-size and large Brazilian detention centres have long relied on informal arrangements between prison authorities and particular inmates to ensure a modicum of order in carceral institutions. In Pernambuco, where they have been used at least since the 1960s, these inmates are called *chaveiros* (keyholders) because they often literally possess keys to the cells or pavilions they are meant to govern. *Chaveiros* are chosen by prison directors but the latter do not always have much leeway in their selection as they must rely on the *chaveiro*'s sway among inmates or among the gangs to which they are affiliated for the arrangement to work. The individuals selected are typically prisoners that command the respect of other inmates, on the basis of the crimes they have committed (former policemen, bank robbers and contract killers often qualify, while thieves or small-scale drug traffickers rarely do), because of their personal charisma and negotiation skills, through the use of force, or by mobilizing their access to prison authorities and ability to dialogue and extract concessions from them.

The foundation of this type of regime is a governance pact, not a citizenship bargain. This pact, moreover, is not between rights claimants, the inmates, and the *chaveiros*, as rights enforcers, but instead between the latter and prison administrators. It lies in the exchange of order and discipline, which *chaveiros* are meant to ensure in a particular sector of the prison, for the right to extort inmates, which is de facto bestowed to *chaveiros* by prison administrators. The financial

dimension of this bargain is crucial as the direction relies on this arrangement precisely because it lacks the resources needed to effectively control overpopulated prisons. The inmates themselves, as well as their families, friends or criminal associates, therefore end up subsidizing the prison system, not mainly through the seizure of part of legitimate labour wage (as specified in the Penal Processing Code), but instead through sheer extortion. While they vary between institutions, extortion practices can extend to all the rights supposedly guaranteed to inmates: understaffed institutions, particularly at night, create ideal contexts for protection rackets; space and beds are at a premium in most units, and prisoners unable to pay for access have to sleep on the ground and sometimes outside of cells, in hallways – sometimes called BR, by analogy to the acronym for the country's highways – that often turn into gutters; poor quality food creates a market for expensive canteen fare, produced in stands whose existence is illegal, and which are also supplied and equipped illegally; scant minimally private space for the sexual relations that inmates can legally have with their partners leads in some cases to the sale of access to those spaces; access to paid work inside the prison, to pharmaceutical, dental or medical services, and even to legal advice is also sometimes captured by those extortion regimes (interviews, Pernambuco, April 2016, July and August 2019, August 2022; Brasil, Camara dos Deputados 2015). In all cases, the “key” players in those extortion schemes are the *chaveiros*, although the opportunities for involvement and profit by guards and the direction are many and *chaveiros* remains to a large extent dependent on those official's cooperation for the functioning of the extortion system.

This kind of arrangement provides an extremely problematic foundation for a legally curtailed but nonetheless relatively broad-based, egalitarian, and stable rights regime for inmates. The citizenship bargain around rights and duties is a side deal under this regime, as its terms and fate are largely determined by the main extortion bargain. That side deal nonetheless can play an important role in the overall functioning of the regime. Several instances that we observed are consistent with Max Weber's classic take on “action orientation” (Roth, 1968, xxxv; Weber, 1978, 1, pp. 29-33): a well-established *chaveiro*, one whose rule is obeyed by custom and habit or, better still, one that has a degree of legitimacy, appears to be much more “efficient” as an ordering agent, as he needs fewer resources to produce the required level of order, and therefore can impose lower rates of extortion. In some cases, *chaveiros* may enjoy high levels of respect from inmates. This is often tied to a criminal trajectory that testifies to exceptional physical courage and organization capacity – typical of bank robbers – or to a consistent refusal to accept humiliation or disrespect on the part of guards or prison authorities. These *chaveiros* may acquire significant autonomous power but still remain extremely useful to prison administration which have to balance the dangers that they may represent and the effectiveness of the order they enforce. Conversely, violent and authoritarian *chaveiros* who impose high levels of extortion create discontent and sometimes need to be reined in by prison directors who otherwise confront disturbances and sometimes riots. In

other words, it makes sense for both prison directors and *chaveiros* to provide a modicum of rights to prisoners, so that their obedience is not strictly driven by fear: a subsidiary rights bargain is therefore appended to the core governance one.

At best, however, the regimes that result are highly unequal. Levels of overpopulation and the overall quality of lodging usually vary extensively within penitentiaries. The most effective *chaveiros* are given the toughest assignments – typically large numbers of the poorest and most violent inmates – and allowed to have a small militia to fulfil them. Extortion rates, relative to the wealth of those inmates, are highest in those poorer areas though still, in many cases, barely sufficient to satisfy greedy *chaveiros*. Indeed, some of those charged with controlling the poorest areas keep pressuring the direction to increase the number of inmates under their rule, so as to give them the tax base they need to sustain their in-house militias (as vicious a circle as any we can think of). Conversely, the few middle-class inmates will be placed in better protected areas, along with older prisoners, rapists and other inmates in need of special protection. Those areas will be less densely occupied and “governed” by milder *chaveiros* devoid of a militia. Overall, while most inmates can benefit from the relative stability that effective governance provides, those regimes involve highly differentiated treatment of inmates, based on personal characteristics, gang affiliation, potential as a source of revenue, or on the personal whims of *chaveiros*. Extortion usually extends to a broad range of issues and use a variety of mechanisms, from the blunt implicit taxation or high prices at the canteen, to the sexual exploitation of inmates’ partners by *chaveiros*, in exchange for leniency towards some rule violation by the inmate, or the simple access to a cell or a better bed, for the poorest, or a modicum of safety, for the slightly better off.

At the same time, *chaveiros* have little interest in creating riot conditions through extreme extortion rates. This may explain why they sometimes seek a larger number of inmates for their sections. In addition, and while they command respect, greedy *chaveiros* and their militias are among the first targets of prisoners when riots happen and, according to several of our informants, their life expectancy post-prison is typically short (interviews, Pernambuco, August 2022). Directors are also moderating forces. The regime is not established in the first place for extortion purposes but instead as a means for prison administrations to manage a large inmate population in the absence of adequate financing. Directors have little interest in extortion rates that can lead to riots, as the latter can doom their long-term professional careers. They also have a vested interest in selecting respected inmates as *chaveiros*, and in keeping extortion rates at “reasonable” levels.

A key weakness of such a regime, even – against all odds – when relatively egalitarian and broad-based rights-wise, is that the illegality of most components of the Direction-*chaveiro* bargain makes it vulnerable to a change in leadership, administrative personnel, or in the effectiveness of government oversight and regulation. While structural pressures – overpopulation and underfinancing – are

likely to lead back to the *chaveiro* formula (unless a faction takes over the prison system), bureaucratic and administrative dynamics creates high levels of uncertainty for particular regimes, as well as short time horizons, always threatening to turn insecure *chaveiros* into Olsonian roving bandits (Olson, 1993) who, rationally, have more to gain from maximizing extortion rates than from establishing stable legitimate orders that would be more profitable, but only over the long term.

## Conclusion

Citizenship regimes as well as the scope and quality of the rights they define and enforce vary widely between and within Brazilian prisons and there does not appear to be a strict correlation between the type of governance regime and the quality of the rights that inmates can enjoy: the state on its own confers and withdraws rights, as do factions and *chaveiros* in the hybrid regimes that they make up with the state, as rights are claimed through several channels, often at once, and denied in the same way. The regimes that govern most inmates involve third-party enforcement, whether by the state on its own or through hybrid regimes involving both the state and *chaveiros* – or criminal organizations. Factions-led regimes emerged as second-party “political community” answers to an extreme denial of inmates’ rights. As factions expanded within prison complexes and then state-wise, becoming more powerful and wealthier in the process, they were remarkably successful at expanding the range of those rights. Even when factions fully dominate prison life, however, their rule remains conditional on the state’s tolerance, which can always be withdrawn, for instance through the transfer of key members to RDD regimes in federal-run prisons.

By definition, prisons embody what Marcelo Neves (1994) has called “sub-citizenship”, if only to the extent that some basic freedoms are denied, by law, to inmates. As in Brazilian society more broadly, however – and as in Dante’s inferno – prison sub-citizenship involves multiple circles, and few inmates inhabit its more amenable parts. Citizenship regimes (Table 1) as well as the scope and quality of the rights they define and enforce vary widely between and within Brazilian prisons. The system they conform is therefore as much a reflection of Brazil’s unequal and precarious citizenship as it is a mechanism for the social punishment of the poor (Wacquant, 2009). The walls described by Teresa Caldera (2011), which are very much citizenship walls, transcend the boundaries of the prison system and structure its organization and its functioning, making Brazilian prisons appear at once as components and microcosms of its deeply unequal social system. The fact that class discrimination, though the special cells and quarters measures, is inscribed in law testifies to the extent to which inequality is embedded in the country’s political and legal order and how it pervades its overall citizenship regime.

Table 1. Citizenship regimes in Brazilian prisons

	<b>State-dominated</b>	<b>Factions-led</b>	<b>Chaveiros-led</b>
Core institutional character of the regime	Unified	Hybrid	Hybrid
Scope of the rights enforced (the bundle)	Extensive for the middle-class Extremely limited for inmates in federal prisons	Limited (state component) Extensive (factions' component)	Limited (both state and chaveiros components)
Distribution of rights	Extremely unequal (special quarters vs RDD)	Equal	Unequal
Quality of the rights	High (though extremely limited for RDD inmates)	High, except in periods of regime establishment or transition	Variable
Regime resilience	High	High	Moderate

The range and quality of the citizenship that Brazilian inmates enjoy do not always co-vary. Inmates in the federal system have an extremely narrow range of rights, but they are relatively secure. The special-quarters regime that benefits the elite, members of the military and police forces, as well as the educated middle-class, guarantees not only a relatively broad range of rights but also very robust ones. It probably best approximates the ideal model of carceral citizenship, with narrowly-defined and carefully enforced sanctions, based on a classic rights and duties bargain. While there are exceptions, *chaveiros* regimes provide both limited and brittle rights to inmates, leaving them at the mercy of the bargains agreed-upon by *chaveiros* and prison directors, and of personnel or policy changes in prison administration. Given their relatively common dependence on inmates' resources, moreover, they confront the challenge of finding optimal levels of extortion, that is, those that pay the most without generating overwhelming opposition from "taxpayers," which can take the form of extremely violent riots. Factions-led regimes stand in-between, offering a very robust but also relatively narrow set of rights, particularly regarding claims for freedoms. Of the three types we examined here, however, they are probably the most egalitarian, imposing the same set of constraints and validating the same set of claims to all the inmates they rule. An important caveat, however, is that their establishment and maintenance often involve all-out wars between factions, in the context of which rights denial reach horrendous extremities. The fragility of *chaveiros* and, to a much lesser extent, of factions-led regimes is highly consequential for citizenship. Indeed, while the quality and range of rights that inmates can enjoy cannot be inferred from the particular regime under which prisoners live, the



breakdown of those arrangements in the context of riots or during chaotic transition periods are necessarily associated with diminished rights. When considered as a whole, and for the vast majority of inmates, both the range and quality of rights they enjoy under Brazil's prison system are shockingly deficient. This essay understands citizenship as a bundle of rights whose scope and quality are determined by the terms of the bargains through which those rights are allocated. These bundles, together with the mechanisms and institutional arrangements that define their component rights are in turn understood as citizenship regimes. Looking at citizenship through the lens of rights, instead of looking at rights through the lens of a citizenship tied to one's belonging to a particular political community may look somewhat heretical from the standpoint of both classic and current scholarship, including most contributions to this collection. We have tried to show that it may be useful to problematize that relationship instead of assuming that belonging indexes for the right to have rights. Our analysis does not disqualify that view, as the most robust and egalitarian regimes (the state's special-cells and the factions-led regimes) indeed reflect a citizenship bargain based on membership to particular political communities. It also shows, however, that rights, if fewer and more brittle, can be claimed in exchange for obedience and tax, without those rights being tied to any kind of "belonging".

The archetypal exchange of equal rights for equal duties between a political community and its members therefore characterizes but one such citizenship regime among many possible others. The article shows Brazil's prison system to articulate several other bargains, only one of which – between the state and its middle- and upper-class members – approaches this purported ideal. The Brazilian state is the main agent of the unequal allocation of rights among inmates. It does so by enforcing the rights of a minority of them and denying those of a majority, both directly, in the institutions or prison sections that it fully controls, and indirectly through its triaging of the country's quickly growing flow of prisoners into hybrid regimes in which inmates themselves play a key role. As it stands, two of the paper's main gaps lie in its neglect of sex and gender issues and in the fact that it only looked at penitentiaries, leaving aside the inmates held in more than a thousand of the country's police stations, and in the institutions in which minors of age are incarcerated (Bugnon, n.d.). The portrait we draw, in sum, must be seen as a partial picture of carceral citizenship in contemporary Brazil.

\* \* \*

**Jean Daudelin** is an associate professor at The Norman Paterson School of International Affairs, Carleton University. He is a specialist of Latin America, particularly Brazil and Central America, where he has researched armed insurgencies, religious movements, indigenous politics, land reform, urban violence, economic integration, and regional politics.

Address: The Norman Paterson School of International Affairs, 5306 Richcraft Hall, Carleton University, 125 Colonel by drive, Ottawa, ON, K1S 5B6, Canada.

E-mail: jean.daudelin@carleton.ca

**José Luiz Ratton** is an associate professor at the Department of Sociology and the Postgraduate Programme in Sociology at UFPE, coordinator of the Centre for Studies and Research on Crime, Violence and Public Security Policies at the Federal University of Pernambuco.

Address: Universidade Federal del Pernambuco, Av. Prof. Moraes Rego, 1235 - Cidade Universitária, Recife - PE, 50670-901, Brazil.

E-mail: jl.ratton@gmail.com

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## Notes

- 1 This disposition is reaffirmed in the Penal Code, whose Art. 38 states that “[o] preso conserva todos os direitos não atingidos pela perda da liberdade, impondo-se a todas as autoridades o respeito à sua integridade física e moral”.
- 2 For inmates “sob os quais recaiam fundadas suspeitas de envolvimento ou participação, a qualquer título, em organização criminosa, associação criminosa ou milícia privada, independentemente da prática de falta grave” (Art. 52).
- 3 Francisco Melo Nascimento (2022) documents for instance the deeply hurtful psychological consequences of, and the structural changes to the functioning of the prison that resulted from, the full and long-term prohibition of intimate visits in a male penitentiary of Brazil’s Northeast.
- 4 “Sinto não ter curso universitário, pois, vai que acontece alguma coisa, eu não terei direito a cela especial” (I regret not having a university degree because, if something happens, I won’t have the right to a special cell.) (O Explorador 2016).
- 5 “Without a university degree, Eike Batista asked for a prison with increased security to turn himself in.” (J.C. 2017).
- 6 Marcello Odebrecht is a case in point, as his 19-year sentence was first reduced to 10 years, in exchange for the payment of a fine and information on related cases, which he was then allowed to spend at home.
- 7 To regain control of the city of São Paulo, paralyzed for days by a deadly PCC-led rebellion, the state government engaged in negotiations with the organization’s leadership.

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