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Sharon Dolovich is a leading expert on the law, policy and theory of prisons and punishment. She recently served as deputy general counsel for the Los Angeles Citizens' Commission on Jail Violence, which was charged with investigating the use of force in the L.A. County Jail and making recommendations for institutional reform. She served as a consultant during the settlement phase of *Johnson v. California*, the U.S. Supreme Court case concerning racial segregation in the California prisons, and as an expert witness in a challenge to the policy of racially segregated lockdowns in California prisons. She has testified before both the Commission on Safety and Abuse in America's Prisons and the National Prison Rape Elimination Commission.

Professor Dolovich has conducted a landmark empirical study of the L.A. County Jail's practice of segregating vulnerable prisoners for their own protection. The first article growing out of this research, "Strategic Segregation in the Modern Prison," 48 *American Criminal Law Review* 1 (2011), received the Ezekiel Webber Prize and a 2012 Dukeminier Award. Her most recent article, "Two Models of the Prison: Accidental Humanity and Hypermasculinity in the L.A. County Jail," 102 *Journal of Criminal Law & Criminology* 965 (2012), also received these two honors. Among other projects, Professor Dolovich is currently focused on a critical examination of Eighth Amendment doctrine as it applies to prison sentences and prison conditions.

TWO MODELS OF THE PRISON: ACCIDENTAL HUMANITY AND HYPERMASCULINITY IN THE L.A. COUNTY JAIL*

Sharon Dolovich

This Article considers what can be learned about humanizing the modern American prison from studying a small and unorthodox unit inside L.A. County’s Men’s Central Jail.¹ As a formal matter, this unit—known as K6G—is the same as every other in Men’s Central, but for one key difference: its residents are exclusively gay men and transgender women.² In reality, however, life in the unit contrasts dramatically with life in the rest of the Jail. Most notably, whereas the Jail’s general population (GP) is almost entirely governed by rules created and violently enforced by racially stratified gangs, K6G is wholly free of so-called “gang politics” and the threat of collective violence (a.k.a. riots) that gang rule creates. K6G is also relatively free of sexual assault—no small feat given that the people housed in this unit would otherwise be among the Jail’s most vulnerable residents.³ Although very far from ideal, in these and other ways, life in K6G is markedly safer and more humane than elsewhere in the Jail.

I. INTRODUCTION

A close study of K6G’s unusual environment strongly suggests that at least some of the destructive pathologies endemic in the Jail’s GP are not inevitable, even in a facility with the deep structural problems L.A. County confronts. These problems—including overcrowding, violence, gang control, and a “perverse” sexual culture in which the strong prey on the weak⁴—are not unique to L.A. County. To the contrary, many jail and prison administrators nationwide to some degree face the same issues. A clear understanding of how the K6G unit operates, what distinguishes it from GP, and how to explain the difference may thus have much to offer those committed to making life in custody safer and more humane, not only in L.A. County, but in prisons and jails all over the country.⁵

This Article is part ethnography and part policy assessment. What emerges is a portrait of two very different inmate cultures—the “two models” of the Article’s title. The first model, which reigns in the Jail’s GP units and to a greater or lesser extent in men’s prisons and jails all over the country, puts intense pressure on residents to seem “hard and tough, and [not] show weakness.”⁶ This pressure, which I call the *hypermasculinity imperative*,⁷ can feed a culture of belligerence, posturing, emotional repression, and ready violence that rewards both indifference to others and a willingness of the strong

to victimize the weak. In such an environment, gangs flourish and trauma abounds.⁸ The second model, found in K6G, is free of any hypermasculinity imperative. In K6G, one instead finds a surprising sense of relative ease, along with open emotional expression, the overt development of mutually supportive friendships and intimate relationships, and demonstrations of creativity and even levity. One also finds in K6G a collective and determined rejection of any efforts to introduce into the unit either the gang code in force in the rest of the Jail or the racial segregation that goes with it.

What explains the difference? This is the puzzle this Article aims to resolve. At first, the answer may seem to lie in the sexual identity⁹ of K6G's residents, who are (or are pretending to be¹⁰) uniformly gay men and trans women. And to be sure, the sexual identity of the people in K6G does help to explain the form of life that has emerged, which in turn contributes to the relatively healthy character of the unit. Yet the primary explanation for this character turns out to be much more basic, and not at all contingent on the sexual identity of the people K6G serves. Put simply, thanks to a variety of unrelated and almost accidental developments, K6G is a place where people feel safe enough to relax and be themselves.¹¹

In men's prisons,¹² hypermasculine posturing is a mechanism of self-protection employed by people who feel vulnerable to harm; behind bars, people will only relax and let down their guard when they feel safe from physical or sexual violence. And as a general matter, all men in GP must be vigilant to avoid making a misstep in the wrong company that, by making themselves seem weak, could expose them to violence as well as ongoing harassment and abuse. By contrast, the relative ease of life in K6G exists not because K6Gs are gay and trans, but because they do not fear being victimized or violently punished by other prisoners for being themselves.

K6G thus suggests a dramatic possibility about the realities of contemporary American penalty, one that merits further attention and study: in American prisons and jails, prisoners' hypermasculine posturing and its ensuing pathologies arise not from an inherent preference for violence, but from a not-unreasonable belief that nothing else will secure their physical safety. To put the point another way, in many cases, it may not be the prisoners who make the prison, but rather the prison—and in particular the widespread failure of the system to treat those in custody as people deserving of protection—that makes the prisoners.

This Article draws on original research conducted in the Jail over seven weeks in the summer of 2007.¹³ During that time, I observed the operation of K6G and the Jail more generally,¹⁴ sat in on K6G classification interviews, spent countless hours in the officer's booth overlooking the K6G dorms, and had many informal conversations with unit residents, custody officers, and other staff.¹⁵ I also conducted one-on-one

interviews, structured around a 176-question instrument,¹⁶ with a random sample of K6G's residents.¹⁷ The account of K6G offered here is based on data gathered through this process. In addition, over the course of my research, I learned much about life in the Jail's GP through the formal interviews, through informal conversation with a range of people with direct experience of the Jail's GP,¹⁸ and through direct observation of the GP dorm that, due to its fortuitous proximity to the K6G dorms, served as my control.¹⁹ The account of GP offered here is drawn from what I learned through these various channels, supplemented and reinforced by some of the many studies, articles, and personal testimonials that describe life in general population units in men's prisons and jails²⁰ around the country.²¹

In significant ways, life in K6G is no different than life in GP. K6G is still jail, and locking people up inevitably inflicts all sorts of harms—physical, psychological, and emotional—even on those detained under model conditions. And K6Gs, as with people in the Jail more generally, hardly live in model conditions, as is clear from K6G's decrepit and dirty physical plant, crowding, random violence, usury, and so on. There are, however, some notable aspects of life in the unit that make K6G a more appealing prospect than GP. Most obviously, people in K6G feel far safer from physical and sexual violence than they would in GP. This difference was a constant and unmistakable theme in my interviews.²³ Also noteworthy was the range of answers given to the question: *If you had five words to describe life in K6G, what would they be?*²⁴ As one would expect from a description of life in jail, several of the listed words carried a negative connotation. But taking the responses to this question as a whole, even more remarkable is the number of words that suggested a *positive* experience of incarceration in K6G, including “fun” or “wow” (8), “exciting” (1), “easy,” “easier,” or “easy-going” (4), “relax” or “relaxing” (2), “nice” or “good” (3), “peaceful” or “calm” (3), “learning experience” (3), and “serene” (1).

K6G's appeal, and in particular its promise of relative safety, reaches well beyond its designated population, so that every day, men who are not gay pretend to be so in order to gain access to the unit.²⁵ By far the most common reason for the pursuit of safety through “reverse-passing” in K6G was the desire for a respite from the gang politics and consequent pressure and danger that define daily life in the Jail's GP.

In L.A. County's gang culture, there are four groupings into which prisoners are divided²⁶: Blacks; Whites; “Sureños” or “Southsiders,” who are native-born Latinos from south of Fresno; and “Paisas,”²⁷ who are foreign-born Latinos.²⁸ Every single person in GP is expected to affiliate with one of these four racialized groupings, and to obey the rules they set down. At their most basic, these rules arise from two foundational principles: racial segregation²⁹ and mutual “respect.” The corollaries of these two principles are the two cardinal sins: racial mixing and interracial disrespect. Behavior is strictly controlled

II. GP AND K6G: TWO MODELS OF THE PRISON²²

and rigidly policed by the gangs themselves to guard against transgressions, and the commission of any offense may bring swift and violent reprisal, often from the wrongdoer's own gang.³⁰

The rigid observation of these rules means that, for the most part, life in the Jail's GP appears remarkably calm. It is, however, crucial to understand that this seeming calm masks the intense stress created for GP residents by the imperative to follow the rules or risk violent reprisal. It also masks the ever-present possibility of collective violence. In this highly calibrated system, collective violence—a.k.a., riots—can break out at any time. Often, the people who fight will not even know why they are fighting, but their knowledge of the reasons is irrelevant. The preeminent obligation for all prisoners caught up in this system is to “jump in” (i.e., join the fight) whenever the signal is given. Those who fail to respond to this signal know that they can expect to be violently punished by their own gangs once the dust has settled.³¹ The system just described, with its rigid code of conduct and violent penalties for violations, is known in the Jail as “gang politics” or just “politics.” These politics make life in GP scary, stressful, and dangerous.³²

Why are there no gang politics in K6G? The best way to answer this question is by exploring yet another notable difference between GP and K6G: the absence in K6G of any pressure to perform a hypermasculine identity. This hypermasculinity imperative³³ is a staple of life in GP, not only in L.A. County, but in men's prisons and jails all over the country,³⁴ in which literally hundreds of thousands of men³⁵ are spending their days doing their best to appear “hard and tough, and [not] show weakness.”³⁶ The archetype of the stoic, weightlifting, muscle-bound prisoner has its origins in this dynamic.³⁷ But in prison, displays of strength and toughness alone are not always sufficient proof of masculinity for men anxious about others' perceptions of their gender identities. In such an environment, any sign of weakness is like blood to sharks; it draws the abusive attention of other (fearful) men trying to avoid being victimized themselves. The imperative not to be seen as weak can dominate the lives of men in custody, especially in high-security facilities. Men cannot be perpetually violent, but they can be—and in the worst prison environments, must be—constantly vigilant lest they convey an impression of vulnerability. Among the qualities explicitly suppressed to this end are any that might be associated with femininity: emotional expression, sensitivity, kindness, etc. In this culture, these behaviors can be code for weakness and signal a person's availability for victimization.

The imperative of hypermasculine performance sparked by anxiety about gender identity is to a greater or lesser extent a feature of life in virtually all male-dominated environments.³⁸ But in prison, there is a second source of internal pressure to engage in this performance, one that may be expected to arise in contexts in which participants

are systematically regarded with some combination of contempt and indifference and thus routinely made to feel worthless and invisible. For men in this position, hypermasculine performance can provide a way to garner some power, status, and respect³⁹ in a climate that offers them few if any other means to do so.⁴⁰

In the Jail's GP, gang politics and the hypermasculinity imperative are mutually reinforcing. On the one hand, the violent enforcement of the gang code elicits hypermasculine behavior by those eager to demonstrate compliance. On the other hand, the imperative to prove one's toughness and thereby command respect creates a constituency for the regime imposed by the gangs.

In K6G, neither of these forces is present. There are no gang politics; everybody "intermingle[s] with everybody,"⁴¹ and efforts to organize K6G residents along gang lines get nowhere.⁴² But there is also no hypermasculinity imperative. In K6G, there is no premium on seeming hard or tough, on being stoic, on suppressing one's feelings. As a consequence, the people in K6G are free to have relatively ordinary human reactions and interactions, and to be themselves.⁴³

The absence of any hypermasculinity imperative in K6G distinguishes the unit from GP in other notable ways. Somewhat counterintuitively, K6G's freedom from gang politics and the pressure to perform a hypermasculine identity has the effect of making one-on-one physical altercations between dorm residents far more common in K6G than in GP. This is because, in the Jail's GP units, as in the California prisons, the gangs have a monopoly on inmate-on-inmate violence. By contrast, aggression in K6G is much looser. As one of my subjects explained it, "in K6G, I only have to worry about me fighting with another person, [over] a personal issue."⁴⁴ By contrast, "[in] general population, if they jump, if the others jump, I have to jump too."⁴⁵

K6G thus poses a paradox: although K6G dorms are more overtly antagonistic than GP, more chaotic, more likely to be the site of physical altercations, K6G's residents—many of whom have previously done time in GP, whether in the Jail or in state prison or both—uniformly feel safer and more able to relax in K6G than they would in GP. That this situation seems paradoxical, however, only indicates the need for a more precise description of the violence GP inflicts, the safety K6G provides, and the (relative) humanity K6G represents. K6Gs know they still face an ongoing threat of physical violence in the K6G dorms. They might be the target of a random assault by someone who is mentally ill. They might be hurt by someone to whom they owe a debt. They might get into a brawl with someone they provoked or who provoked them. At the same time, however, they do *not* fear being the victim of sexual or physical predation because they are gay or trans or do not otherwise fit the model of the tough alpha male. And they do not fear being forced at a moment's notice to engage in physical violence against

people with whom they have no issue—indeed, whom they may affirmatively like and respect—in order to avoid being physically disciplined later for failing to jump in, or seeming weak in the eyes of men looking for ready victims.

There is another crucial dimension to the safety K6G provides—again, despite the real possibility of bodily assault from a number of quarters—that is largely separate from the threat of physical violence. I am referring here to the *psychological* violence of life in GP, and the *psychological relief* to be had from living in an environment where people need not be constantly on their guard against doing or saying anything that might violate the culture's strict behavioral norms or otherwise expose themselves as weak and thus as a target. In K6G, there is no hypermasculinity imperative, because there is no one in the unit with either an investment in having other people behave a certain way or the broad support required to implement a regime in which people are always being watched and judged. When, on occasion, a newcomer tries to “start something,” they are quickly shot down.⁴⁶ This freedom from scrutiny and the need to be on one's guard is a large part of what makes the place feel so safe. The sense of safety it confers is partly physical, because an environment where hypervigilance is required is one in which a person may be physically victimized if he fails to keep the mask in place. But again, it is also psychological, because once people are able to relax the vigilance and self-restraint, it becomes possible for them to stay connected to who they are and to the essential aspects of their personhood.

All this raises a question: if this is what violence and safety mean for the people in K6G—and arguably, by extension, for many people in the Jail's GP—what would humane carceral conditions look like? The experience of K6G suggests at least a partial answer to this question. Humane conditions are those in which people feel safe both from the threat of physical harm and from the need to be constantly on their guard, lest they say or do anything that might suggest human vulnerability. Humane conditions allow people to maintain and develop a connection to their own identity and sense of self. In this article, I identify several factors that have—almost accidentally—come together to make K6G a relatively safe and humane environment in these three important respects (i.e., protecting people from physical harm; affording them psychological relief from the need for constant vigilance; and creating mechanisms by which they can remain connected to—and to develop—who they are as people).

III. WHAT MAKES K6G K6G?

A. Creating a Safe Space in the L.A. County Jail

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hat explains this dramatic difference, the absence in K6G of destructive dynamics that are found not only in the Jail's GP but to a greater or lesser degree in many men's carceral facilities around the country?⁴⁷ It is tempting to try to explain the unusual climate of K6G by the sexual identity of its residents. And, as will be seen, sexual identity is not irrelevant here. But it would be

misguided to look no further than this factor to explain K6G's distinctive environment. K6G is full of people well acquainted with the GP code. Many have spent years in GP units pretending to be straight to avoid being victimized or escaping the worst effects of this cultural system by hooking up with a stronger prisoner, exchanging regular sexual access and obedience for protection from assault by others.⁴⁸ For people with direct experience of GP suddenly to relax and engage openly in the very behaviors known to endanger them elsewhere in the Jail, something more has to be true about their new environment besides simply being in close proximity to other gay men.

That "something more" is simple: unlike men in the Jail's GP, people in K6G independently feel sufficiently safe and protected that they do not have to posture or look to the gangs for protection. The puzzle then becomes: how, in a facility as violent and dangerous as Men's Central, have people in K6G come to feel secure enough to abandon many of the artifices on which men in GP routinely rely for self-protection? There is no single answer to this puzzle. Instead, my research suggests several factors that have come together to help create the conditions in which the people in K6G feel safe enough to relax and be themselves—factors that are only contingently connected to the sexual identity of people in the unit. These factors include: (1) an institutional commitment to rigorous implementation of the consent decree that first established K6G, and which requires strict physical separation between K6Gs and GPs at all times; (2) the fact that for almost its entire history, the unit has been run by the same two officers, who have treated unit residents with respect, evenhandedness, and concern for their well-being; and (3) the small size of the unit, which, together with a high recidivism rate and the automatic reclassification to K6G of former unit residents who return to the Jail, has fostered over time a sense of community and personal connection in the unit. There is also a possible fourth factor: the degree of attention K6G has received from outside organizations, media outlets, and even researchers like me.

Arguably, none of these factors alone would have been enough to make K6G's relative humanity possible. None, moreover, was the intended result of deliberate efforts to reduce the appeal of gang politics or hypermasculine performance. Instead, each emerged almost accidentally in the wake of the 1985 court order that created K6G. Together, they have helped create a relatively safe space in which hypermasculine performance is unnecessary. At the same time, the K6G experience demonstrates that, once the conditions of safety are in place, the resulting culture can have its own positive second-order effects, enabling the subsequent emergence of multiple avenues of healthy self-expression, which can in turn help to mitigate the destructive and dehumanizing effects of imprisonment and further promote a relatively healthy climate for the people inside.⁴⁹ In short, to a significant extent, K6G is a case of accidental humanity begetting a virtuous circle of desirable effects, a vivid contrast to the frequent inhumanity of incarceration in American prisons and jails and the vicious circle of violence and abuse it can yield.

B. Identity Theories:
Looking to Sexual
Difference

Thus far, the sexual identity of K6G's residents has been kept as much as possible on the sidelines so that the outsized salience of this factor would not obscure the other consequential differences between the two models. It would, however, be folly to suggest that K6G's unusual character has nothing to do with the sexual identity of unit residents. In what follows, I explore three possible ways that the sexual identity of K6G's residents might be thought to explain as a first-order matter the absence of gang politics and hypermasculine posturing in the unit. As will be seen, these claims rest to some extent on stereotypical characterizations. At the same time, as to each, more careful examination of the underlying premises turns out to deepen in significant ways our understanding of K6G's relatively safe and humane character, and to offer insights into how to make carceral conditions safer and more humane, not just for gay men and trans women, but for all people in custody.

1. They Can't

One possible explanation for the K6G difference is that K6G's residents, being gay or trans, are unable to perform a hypermasculine identity and thus to conform to the dictates of the gangs, which demand self-presentation as hard, tough, and potentially violent. There are obvious flaws in this explanation. For one thing, as Jeannie Suk rightly notes, heterosexuals have no monopoly on masculine performance.⁵⁰ Even more to the point, every day in prisons and jails around the country, gay men housed in GP units successfully conform their behavior to the hypermasculinity imperative to the degree demanded by their respective institutional environments. Certainly, being gay does not preclude gang membership,⁵¹ as was evident from the many (temporarily inactive) gang members in K6G.⁵²

Given that gay men and trans women are known to be at heightened risk of victimization in custody, it does seem likely that K6G houses a higher proportion of people⁵³ who are less able to successfully perform a hypermasculine identity.⁵⁴ Yet if K6G contains a disproportionate number of people likely to be victimized in GP, it also contains a sizable number of people who could—and have—successfully engaged in hypermasculine performance in GP. Those in this group know the game, can play the game, and have experienced first-hand the way that failing to do so in certain circumstances can put one at risk. It does, however, seem hard to credit the notion that, absent other contributing factors, the people in K6G—many of them repeat players with a long history of confinement in the Jail, in the state prison, or both—would put aside all they know about how to survive in custody just because others in the unit are weaker than they are. This is especially implausible since in the usual case, the presence of weaker people in one's housing unit is generally not a reason to leave off hypermasculine posturing but a welcome relief, since it means that one may not have to work as hard to avoid becoming a target. Other factors must therefore be at work. And as has been seen, in K6G, a host of structural conditions only contingently related to sexual identity of unit residents have come together to make those men otherwise

able to successfully perform a hypermasculine identity feel sufficiently safe and secure not to have to bother doing so, however many potential victims may be in the vicinity.

The evident appeal of K6G's less pressured environment suggests a second explanation for the K6G difference hinging on the sexual identity of K6G's residents: considering the relative ease of life in K6G, with the room it creates for emotional expression, meaningful interpersonal engagement, creativity, and even levity, unit residents would simply prefer not to play the game.⁵⁵ No doubt, there *are* men in custody who would choose the high-stakes, high-pressure atmosphere of a hypermasculine culture over the relatively relaxed and comfortable environment of K6G. But the fact that, given the choice, some men would prefer GP to K6G does not mean that this is true of all or even most men in custody. To imagine otherwise is to fundamentally misunderstand the experience of life in GP. Most of the men who perform a hypermasculine identity in the Jail's GP or in other GP units where this imperative governs do so not by choice, but because they feel they have no choice. Just because people play the game does not mean they do so willingly. To the contrary, given the stakes of unsuccessful hypermasculine performance in many men's carceral facilities, it seems more likely that, as to most people—gay or straight—participation in this “desperate and dehumanized context”⁵⁶ is driven far more by an understandable desire to avoid victimization than by enthusiasm for what the culture demands.⁵⁷

2. They Don't
Want To

There is yet a third possible explanation for the K6G difference grounded in the sexual identity of K6G's residents: the people in K6G eschew the hypermasculine culture of GP because they do not need what it provides. This is a more promising direction, which recognizes that men who conform to the dictates of GP's prison culture do so not because they prefer it but because they feel compelled.⁵⁸

3. They Don't
Need To

Four benefits in particular appear to accrue from hypermasculine performance: (1) *sexual satisfaction*, at least for those men prepared to “punk” or “turn out”—both euphemisms for rape—the weakest of their fellow prisoners, thereby reframing them as “female” and thus as desirable sexual partners;⁵⁹ (2) *proof of manhood*; (3) *safety* from men looking for weaker people to victimize; and (4) *respect*. The question then becomes: how is it that people in K6G can get these benefits without hypermasculine performance, but men in the Jail's GP cannot? And to what extent is the reason grounded in the sexual identity of unit residents? If sexual identity proves the whole of it, this would certainly seem to negate the generalizable lessons from the K6G experience. As we will see, however, sexual identity is not the whole of it. And it turns out that even where this factor does in part explain the K6G difference, it is still possible to distill generalizable insights from the reasons why.

Consider the first two benefits hypermasculine posturing provides men in GP: sexual satisfaction and proof of manhood. The open sexuality in K6G means that, as Suk puts it, people will be able to satisfy their “sexual orientation within the confines of the prison

by being sexually dominant will be able to express that identity through consensual sexual liaisons with other K6G residents who prefer to take a sexually subordinate role. Indeed, the presence in K6G of people with a range of gender identities means that even nonsexual interactions will regularly affirm the masculinity of male-identified residents of the unit. This is by contrast to GP, in which “prisoners [who] have very little communication with women ... feel as if they have lost certain features of their masculine identity.”⁶¹

K6G powerfully illustrates the humanizing effects of sexual expression,⁶² both in terms of the sexual satisfaction it affords and as a means for reinforcing and affirming gender identity, i.e., the first two benefits of hypermasculine performance on our list. Realistically, for a variety of reasons,⁶³ the lack of access to women will continue to be among the “pains of imprisonment” for most men in custody for the foreseeable future.⁶⁴ Still, the K6G example underscores the importance for all prisoners of “conjugal visits” by spouses or lovers; of family visits that allow people in custody extended time with children outside the limiting and often oppressive environment of the visiting room; of weekend furloughs; and of any other programs that afford the opportunity for people to perform their preferred gender roles in a socially productive and personally affirming way. These programs would allow for sexual release, a valuable benefit in itself. More importantly still, “[m]aintaining healthy bonds with their children and spouses helps [male] inmates reaffirm their masculinity, and reduces their need to establish a manly self-image by victimizing other inmates.”⁶⁵

The second generalizable lesson to emerge from recognizing the importance of the sexual satisfaction and secure gender identities K6Gs enjoy is entwined with the third benefit hypermasculine performance provides men in GP: physical safety. Without the assurance of physical protection, there would *be* no open sexuality in K6G. Simply being housed with their objects of desire is not enough; people also have to feel safe enough to act on their desires. The feeling of relative safety K6Gs enjoy, a benefit only contingently related to the sexual identity of unit residents, is the main reason people in the unit feel no need for hypermasculine posturing or gang involvement. But even assuming Suk is right that the pathologies found in GP arise to a large degree because heterosexual-identified men in custody lack access to their objects of desire, the K6G example is still instructive for the broader humanizing project, since it offers a model for protecting vulnerable prisoners from the pathological effects of this deprivation. In other words, even absent any possibility of wholly resolving the problem of sexual frustration in prison, the foregoing account of K6G at the very least offers insight into how to keep safe those people at risk of being victimized as a result.

Specifically, the K6G model suggests the wisdom of (1) identifying and separating out likely victims from likely predators for housing purposes;⁶⁶ (2) maintaining a strict boundary between likely victims and likely predators; (3) monitoring units in an ongoing way to identify emergent predators; (4) automatically removing predatory indi-

viduals as soon as they become known; (5) ensuring continuity of staffing as much as possible to allow staff to get to know the people in their custody as individuals; and (6) fostering a culture of respect toward people in custody as a way of, among other things, creating channels of communication between staff and prisoners that may help staff to identify threats and resolve problems when they arise.⁶⁷

There is, however, one final urgent need hypermasculine posturing provides men in GP that bears consideration here, and that is *respect*. For men in prison, the experience of incarceration not only “besieges” their masculinity, but it can also systematically demean and humiliate them.⁶⁸ For at least some of these men, hypermasculine performance may be the only way they have to assure themselves (and others) that they matter. The harder and more dangerous a person can seem, the more others will be forced to pay heed.⁶⁹

On this score, too, K6Gs turn out to be less dependent on hypermasculine performance to get what they need. And here again, the reason why is only contingently related to the sexual identity of K6G’s residents. Unfortunately, men in custody are often treated like “a breed apart, . . . the scum of the earth.”⁷⁰ By contrast, in a variety of ways, the people in K6G are made to feel like human beings who matter. The most obvious way is through the explicit institutional commitment to keeping people in K6G safe from physical harm—perhaps the ultimate form of respect. But there are other features of K6G that are also affirmatively humanizing in this sense. For example, K6G is a place where the officers in charge of the unit know everyone personally and are thus able to some extent to interact with them as *people* and not just as “inmates.”

There is arguably even something respectful and affirming in the Jail’s efforts to identify at intake which individuals are “homosexual”⁷¹ and therefore belong in K6G. The notion that there might be something humanity-affirming about an official inquiry into people’s sexual orientation—for purposes of identity-based segregation, no less—is admittedly counterintuitive.⁷² But K6G’s high recidivism rate means that, at any given time, most people in the unit have been there before, likely many times. This feature, combined with the fact that the benefits of K6G are common knowledge among people familiar with the Jail, means that most people who answer “yes” at intake to the question *Are you homosexual?*⁷³ (and indeed, many people who answer in the negative) know full well that an affirmative answer offers the prize of classification to K6G. In other words, most people who answer “yes” to this question at intake are glad to be able to do so and experience the inquiry as evidence of the Jail’s commitment to making sure that they will be kept relatively safe while in custody. We should not, in other words, overlook the humanizing power of simply acknowledging that people are worthy of official protection.

Of course, one should not overstate the validation and respect enjoyed by K6G's residents. People in K6G are still incarcerated, and still treated in many ways just like inmates.⁷⁴ But it nonetheless appears that, despite the many demoralizing and even humiliating aspects of life in the unit, K6G's residents are made in various ways to feel that their safety and well-being are issues of institutional concern. They thus have a sense that they are regarded as people who matter, despite their being incarcerated.

In this aspect of the K6G experience is a crucial lesson that is both eminently generalizable and self-evidently valid: people in custody should be treated as much as possible like human beings. Just as violence begets violence and chronic insecurity begets behaviors that instill fear in others, treating people with respect and consideration seems far more likely to spark a virtuous circle, promoting behaviors that will further promote humane, and humanizing, carceral conditions.

Perhaps the most destructive and dehumanizing aspect of life in the Jail's GP—and in other GP units where the hypermasculinity imperative governs—is the way it can require people to work so hard to suppress, and even in some cases to destroy, the most vulnerable and essential parts of themselves. By contrast, people in K6G not only do not need to suppress (and thus alienate themselves from) their core humanity, but they can engage in behaviors that allow them to connect to, nourish, and even develop their own personal identities and senses of self. They do this through sex and romantic relationships, yes, but they also do it through other forms of personal expression and interpersonal connection. When people in the unit laugh, sing or dance, and even when they complain, argue, or express unhappiness or irritation or jealousy, they are being human, manifesting natural human reactions that connect them to their authentic selves.⁷⁵ Life in K6G, like life in the Jail more generally, offers few socially productive channels for self-development.⁷⁶ Yet in the free space it creates for open emotional expression and honest interpersonal engagement, K6G allows unit residents the ability—all too rare in custody—to remember and to realize who they are.

If there is something to this account, it suggests the value of creating channels for men in GP to (re)connect to their core selves and of providing those who need it a way to develop a sense of themselves as something other than tough guy or gang member. Helping people in custody to grow as people and to cultivate self-respect might help to counter incarceration's most dehumanizing effects. Indeed, for those with positive self-images—as, for example, students, veterans, skilled tradesmen, husbands,⁷⁷ or fathers—hypermasculine posturing by fellow prisoners may well seem not just unnecessary but affirmatively absurd, a lot of foolish bluster.

Being forced to engage in hypermasculine posturing creates its own vicious circle; by severing people from a sense of their own humanity and forcing them into behaviors

more likely to prompt self-loathing than self-respect, it makes them even more dependent on the status and (fear-based) respect that successful hypermasculine performance can generate. The K6G experience, by contrast, suggests a crucial connection between being treated as human, the ability to feel and act human, and the refusal to adopt behavioral codes that only dehumanize both self and others. This may be the most important lesson K6G has to teach, and it has no necessary connection with the sexual orientation or gender identity of the people in the unit.

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1. In corrections, prisons and jails serve distinct purposes. Prisons provide long-term housing, typically for sentenced offenders serving terms of longer than one year, although the precise cut-off can vary by state. See Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1579 n.76 (2003). Jails hold sentenced prisoners serving short terms, typically less than one year (although recent shifts in California in the wake of *Brown v. Plata*, 131 S. Ct. 1910 (2011), have led the state to require county jails to retain custody of “N3”—i.e., non-violent, non-serious, non-sex related—offenders for their full sentences, however lengthy, see Overview, *AB 109 & AB 117 Public Safety Realignment of 2011*, CAL. DEP’T OF CORR. & REHAB., http://www.cdcr.ca.gov/realignment/docs/AB_109-PowerPoint-Overview.pdf (last visited Jun. 4, 2012); Andy Furillo, *Sacramento Judge Sentences Drug runners to 13 Years Each in ‘County Jail Prison,’* THE SACRAMENTO BEE, Apr. 22, 2012, <http://www.sacbee.com/2012/04/21/4431234/sacramento-judge-sentences-drug.html>). In addition, jails house individuals awaiting trial but denied bail, convicted offenders awaiting sentencing, and prisoners sent from state or federal prison to serve as witnesses in trials, whether their own or those of others. See Schlanger, *supra*, at 1579 n.76. The role of jails in providing housing for detainees with court dates explains why jails are typically situated adjacent to courthouses, although L.A. County is so large that most Jail inmates with court dates have to be bused from the Jail to their respective courthouses.

Given these differences, it might be wondered what a study of life in a jail has to teach about life in prison. The answer is that, although there will be some significant differences between prisons and jails in terms of both operation and culture, the aspects of the Jail culture on which this Article focuses are also to be found to a varying degree in many men’s prisons and jails around the country. At the same time, the hypermasculinity imperative, although a staple of prison life, may be at its height in jail, when men who are on their way to prison look to make a reputation as someone not to be “messed with.” The high turnover typical of jails also increases the pressure on detainees to maintain a tough-guy image, since people are constantly being thrown into close quarters with new and unknown companions, any one of whom could prove to pose a threat. This is especially true in the L.A. County Jail, which admits over 160,000 people a year despite an average daily count of no more than 19,000. The massive size of the L.A. County Jail system compels repeat players to forge self-protective alliances with strangers—hence the strong gang culture. Thus although the hypermasculine culture found in the Jail’s GP is a standard feature of life in many men’s prisons, in the jail environment, the pressures are at their sharpest, which makes the jail an ideal context for the study of this phenomenon. One hopes that, with a commitment to meaningful reform and proper institutional design, that toxic culture might be replaced with one more like that of K6G, not only in L.A. County, but in all carceral facilities governed by a hypermasculinity imperative. See Terry Kupers, *Toxic Masculinity as a Barrier to Mental Health Treatment in Prison*, 61 J. CLINICAL PSYCHOL. 713, 714 (2005) (describing toxic masculinity as “the constellation of socially regressive male traits that serve to foster domination, the devaluation of women, homophobia and wanton violence” in male prisons).

2. The term “transgender” denotes people whose gender identity does not match their birth sex. Throughout this Article, I use the term “trans women” to refer to people who were born biologically male but who self-identify and self-present as women.

3. See HUMAN RIGHTS WATCH, NO ESCAPE: MALE RAPE IN U.S. PRISONS 52 (2001), available at <http://www.hrw.org/legacy/reports/2001/prison.report.html> (“[G]ay inmates are much more likely than other inmates to be victimized in prison.”); JUST DET. INT’L, LGBTQ DETAINEES CHIEF TARGETS FOR SEXUAL ABUSE IN DETENTION I (2009) (citing VALERIE JENNESS ET AL., VIOLENCE IN CALIFORNIA CORRECTIONAL FACILITIES: AN EMPIRICAL EXAMINATION OF SEXUAL ASSAULT (2007)), available at http://justdetention.org/en/factsheets/JD_Fact_Sheet_LGBTQ_vD.pdf (“67 percent of inmates who identified as LGBTQ reported having been sexually assaulted by another inmate during their incarceration, a rate that was 15 times higher than for the inmate population overall.”); VALERIE JENNESS, THE VICTIMIZATION OF TRANSGENDER INMATES, at slide 14 (2006), available at <http://ucicorrections.seweb.uci.edu/files/2013/06/Victimization-of-Transgender-Inmates.ppt> (“59% of [California’s] transgender population reported sexual victimization as compared to 4% of the general prison population.”).
4. See Wilbert Rideau, *The Sexual Jungle*, in LIFE SENTENCES 73, 75 (Wilbert Rideau & Ron Wikberg eds., 1992) (describing the “perverse [sexual] subculture” of Angola prison).
5. Of course, some realism is appropriate here. Even assuming that humane imprisonment is not an oxymoron—arguably an open question—making the conditions in American prisons and jails truly humane would require at a minimum a wholesale redesign of existing penal institutions and a significant drop in the number of people in custody. In the meantime, there are real people—at present, over 2.3 million of them, see *infra* note 35—being held in prisons and jails around the country. This simple fact creates an imperative to make current carceral conditions, if not wholly humane, then at least as safe and humane as possible.
6. See Derrick Corley, *Prison Friendships*, in PRISON MASCULINITIES 106 (Don Sabo et al. eds., 2001).
7. See Sharon Dolovich, *Strategic Segregation in the Modern Prison*, 48 AM. CRIM. L. REV. 1, 14-16 (2011).
8. See Craig Haney, *The Perversions of Prison: On the Origins of Hypermasculinity and Sexual Violence in Confinement*, 48 AM. CRIM. L. REV. 121, 128 (2011) (citing Nancy Wolff and Jing Shi, *Trauma in Incarcerated Persons*, in HANDBOOK OF CORRECTIONAL MENTAL HEALTH 277, 293 tbl. 11-3 (Charles L. Scott ed., 2nd ed. 2010)).
9. Throughout this Article, I use the term “sexual identity” as shorthand for the sexual orientation and gender identity of K6G’s residents. I do so for brevity’s sake only, and do not intend to suggest that the two are not distinct and very different categories.
10. There are almost certainly some men in the unit who are neither gay nor trans, but merely pretending to be so. I address this phenomenon at length elsewhere. See Dolovich, *supra* note 7, at 25-43.
11. K6G provides segregated housing for all gay men and trans women detained in the Jail. Before people may be admitted to K6G, classification officers must determine that they meet the standards for admission, meaning that they are found to be either “homosexual” or male-to-female transgender. See Dolovich, *supra* note 7, at 24 (explaining that the decision was made in the early 1990s to house the male-to-female transgenders in K6G with the gay men). Once admitted, K6G residents are kept physically separated from the rest of the Jail’s population. This program thus entails state-sponsored, identity-based segregation. In a companion piece, I address several objections that might be made to such an undertaking, and consider at some length whether, in light of its many admittedly troubling aspects, such a unit should even exist. Here, I focus instead on the ultimately far broader question of K6G’s implications: what life is like in a carceral unit populated exclusively by

gay men and trans women, the contrast between life in that unusual unit and life in GP, and what this contrast might teach us about making the experience of incarceration in general safer and more humane. I recognize that this enterprise may expose me to the charge that, by seeking the means to improve carceral conditions, I may only be further entrenching a fundamentally illegitimate penal system. This is a risk of reform efforts in any context. People must make their own calculations as to the right course, and, as I explain elsewhere, for me, the alleviation of immediate suffering is the greater imperative. *See id.* at 10-11.

12. In this Article, I focus on men's prisons, although some of the lessons to be drawn from K6G—most notably the need to keep people in custody safe from harm, to treat them with respect, and to provide access to humanizing pursuits—apply equally to women's prisons.
13. UCLA IRB # G07-01-106-03. For a detailed description of the research protocol, see Dolovich, *supra* note 7, at 92–99.
14. This enterprise was made possible by Chief Alex Yim, who generously allowed me open access to all parts of the facility.
15. I took lengthy field notes each day and dictated the notes each night, when what I had seen was still fresh in my mind.
16. I developed this instrument with the help of my colleague, Joe Doherty. It is published in its entirety at Dolovich, *supra* note 7, at 99–110.
17. *See id.* at 5 n.21 (explaining the constitution of my sample, including its racial makeup). In all, I interviewed thirty-two residents, almost 10% of the unit's population at the time. Interviewees were assigned random interview numbers. The interviews were recorded and later transcribed. Most interviews encompassed multiple audio files, which were saved—and therefore transcribed—alphabetically, with the sequence restarting each day. Citations to these interview transcripts will be referenced hereinafter in the following manner: Int. # (Interviewee number), at file # (i.e. A–G) page # (transcript page reference); e.g., Int. 46, at C3. The interview process yielded fifty-one hours of audio recordings, which were subsequently transcribed. I thank the UCLA Academic Senate, the UCLA Dean's Office, Harvard Law School, and Georgetown University Law Center for their generous support of this costly enterprise.
18. This group of informants included custody officers and other staff, then-current GP residents, including trustees and people in the GP unit next to the K6G dorms, and people in K6G who had previously done time in the Jail's GP.
19. *See* Dolovich, *supra* note 7, at 94. I also learned about life in the California prisons more generally, both through the formal interviews (since many of my interview subjects had previously spent time in state prison), and through informal conversations with other K6G residents who had also done time in state prison.
20. *See, e.g.,* K.C. CARCERAL, PRISON, INC. (Thomas J. Bernard ed., 2006) (discussing an unnamed, privately operated prison in the American South); T.J. PARSELL, FISH: A MEMOIR OF A BOY IN A MAN'S PRISON (2006) (discussing Michigan prisons); WILBERT RIDEAU, IN THE PLACE OF JUSTICE (2010) (discussing Louisiana's Angola prison); MICHAEL G. SANTOS, INSIDE: LIFE BEHIND BARS IN AMERICA (2006) (discussing federal prisons); Haney, *supra* note 8; Christopher D. Man & John P. Cronan, *Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for "Deliberate Indifference,"* 92 J. CRIM. L. & CRIMINOLOGY 127, 164–75 (2001).
21. Although there are obviously differences between prisons, the GP culture I describe in this Article represents the baseline from which positive departures, although welcome, are notable. *See* Haney, *supra* note 8, at 127 n.22 (noting that although not all jails and prisons are the same in terms of the pathologies they create, it is nonetheless possible to

make generalizations that are “normatively correct in many correctional settings” even if not “universally applicable,” and that “the lack of universality does not undermine the capacity of the jail and prison context to generate tremendous psychological pressure that is felt by virtually all inmates, even though it may dramatically transform the behavior of only some”). To illustrate the variance: a person I met at San Quentin State Prison reported a range of experiences during his many decades in the California prison system. He described being at Vacaville State Prison in the early 1980s, and found the inmate culture there to “accommodate all types of people,” including “[gang] dropouts, child molesters, [and] gangbangers from all sides.” There was, in Vacaville at the time, a “high level of acceptability.” This was “the only prison [he had] ever seen or heard of that two gays could sit on the yard and kiss, even get caught having sex with no repercussions.” By contrast, in the late 1980s, he was at Folsom State Prison where “there was an average of one stabbing every three days. No transgenders here, some gays, way undercover. No mixing of races in any way. Sometimes the air [was] so thi[ck] with tension that it was hard to breath[e]. A person had to live by the code that their race or gang set, with just survival being the daily goal.” Letter from Jeffrey Scott Long to author, (Feb. 2012) (on file with the author). Kenneth Hartman confirms Long’s account of Folsom prison in the 1980s. Hartman reports that, on his arrival at Folsom shortly after being sentenced to LWOP in the early 1980s, he and the other new arrivals were met by a prison official, who offered two “admonitions”: “If you try to escape, we’ll kill you. If you put your hands on one of my guards, we’ll kill you. Other than that, we don’t give a shit what you do to each other.” According to Hartman, “[n]o more accurate description of Folsom [wa]s ever offered.” KENNETH E. HARTMAN, *MOTHER CALIFORNIA: A STORY OF REDEMPTION BEHIND BARS* 35 (2009).

22. I use the term “prison” here in its broader, less technical sense, to refer to custody facilities in general. *See supra* note 1 (explaining the difference between jails and prisons and explaining why the study of a jail yields models of custody also relevant to prisons).
23. During my research, I conducted in-depth qualitative interviews with a random sample of approximately 10% of K6G’s residents. *See supra* note 17. For a detailed description of the research protocol, see Dolovich, *supra* note 7, at 92–99 (Methodological Appendix); *id.* at 100–10 (reproducing the questionnaire used in my interviews).
24. *See* Dolovich, *supra* note 7, app. B, at 102 q.35. I then followed up by asking for an explanation of each descriptor offered. These questions, which proved very effective in eliciting a picture of life in K6G, were Joe Doherty’s idea.
25. This phenomenon is known as “reverse-passing.” To this, some may object that sexuality is more dynamic and complex than the binary gay/not gay variable would allow, and that even men who may not “seem” gay in the conventional sense of the term may experience same-sex attraction and thus not identify as “straight.” This is no doubt the case. But my assertion in the text that some men lie to get access to K6G is not based on a failure to credit either the complexity of sexual identity or the range of ways people might understand and relate to their own sexuality. It is based on the frank admissions of many men whose classification interviews I observed that their claims of being gay, made in their initial sorting interview, had in fact been outright fabrications. Although one’s stated self-understanding can certainly be complicated by fear of the implications of connecting with those parts of oneself that are in conflict with prevailing social norms, it would be a mistake to allow theoretical sophistication to blind us to the possibility that, in many cases, the most accurate explanation is also the most obvious. Sometimes, in other words, a lie is just a lie. And my experience in K6G leaves me confident that the phenomenon of men seeking access to K6G by pretending to be gay is a frequent occurrence. For more

extended discussion of this phenomenon and how it plays out during the second stage of the classification process, see Dolovich, *supra* note 7, at 30–43.

26. To say “is divided” rather than “divides itself” may strike some as a failure to understand the extent to which the prisoners themselves design, operate, and enforce this system. But two factors of the system’s operation make it more appropriate to describe the gang structure as one in which prisoners are assigned their affiliation rather than choosing it themselves. First, even those who seemingly choose their own affiliation really have little choice in the matter, since even those who would prefer to have no part of this structure are compelled, often under threat of physical reprisal, to participate. Second, in many ways, prison officials actively support and even strengthen gang control over the prison culture, even to the point of assigning individuals to one of the four groups. On this point, Philip Goodman’s ethnographic work in the California prison system’s reception centers is essential reading. See Philip Goodman, “*It’s Just Black, White, or Hispanic:*” *An Observational Study of Racializing Moves in California’s Segregated Prison Reception Centers*, 42 *LAW & SOC’Y REV.* 735 (2008). As Goodman shows, the assignment of race is often a “negotiated settlement” reached by officers and inmates collaborating together to arrive at a given racial characterization. *Id.* at 737. At least one of my interview subjects suggested that at times, officers make the decision themselves about the “race” to which a given prisoner will be assigned. This subject, an older American-born Latino, described how California state prison officials assigned him to the Paisas. Int. 60 at, C7–8. This was a wise choice, since this decision allowed him to avoid having to run with the Southsiders, a more disciplined and demanding operation with strenuous rules with which he might have had a hard time complying.
27. “Paisa” or “paisano” literally means “fellow countrymen.” See also Jennifer Waite, *Prison Slang 104: Chicano Slang*, YAHOO! VOICES (Aug. 12, 2009), <http://voices.yahoo.com/prison-slang-104-chicano-slang-3985278.html?cat=17> (explaining that, in prison, “paisa” is a “slang term for Mexican immigrants who have not yet assimilated,” and that it “[c]an be used derogatorily [sic], but is not necessarily an insult”).
28. Goodman’s work suggests that in the California prisons, the four designated groups are Blacks, Whites, Southsiders, and “Others.” See Goodman, *supra* note 26, at 736. In L.A. County, anyone who does not fit one of the four designated categories listed in the text (i.e., who qualifies as an “Other”) is expected to “run with” the blacks, although they may have to pay a tax to do so.
29. Again, it bears emphasizing that the “racial” segregation so strenuously enforced in this particular social system is governed by a cultural construction of the category of race that is unique to this context.
30. I am well aware that the cultural system I am describing here is deeply offensive and troubling. The fact of the description should in no way be taken as evidence of endorsement. To understand K6G and the difference it represents, it is necessary that the larger gang culture be understood, which is why I am describing it in such detail here.
31. As one of my (black) respondents explained, “[i]f a Mexican and a black fight, and another Mexican jumps on the black and beat on the black, I may be called to where I have to jump in and fight. And if I don’t, then the blacks may all beat me up later.” Int. 119, at C4.
32. This effect came through clearly in my interviews, as subjects described their experiences of life in GP. One (white) respondent described it as follows:
I was scared to death. Because where I was [housed], I was with nothing but Mexicans. They were all gang bangers [i.e., someone deeply involved in the gang culture], every one of them were gang bangers. I forget what clique they were from. But in [the overhead light in my cell] we had thirty-two shanks, knives, handmade knives. And then one day somebody

disrespected one of the Mexicans, and the Mexicans they all went off on the whites. The only reason why they didn't go off on me is because our tank had all those shanks in them. And that's the only thing that saved me from being jumped on by six other gang bangers.
Int. 123 at E6.

33. See Dolovich, *supra* note 7, at 15—17.
34. See *supra* note 20.
35. There are at present over 2.3 million people being held in prisons and jails in the United States, see Sharon Dolovich, *Exclusion and Control in the Carceral State*, 16 BERKELEY J. CRIM. L. 259, 307 & n.151 (2011), the vast majority of whom are men. See U.S. DEP'T OF JUSTICE, JAIL INMATES AT MIDYEAR 2010—STATISTICAL TABLES (NCJ 233431) 7 (Apr. 2011); U.S. DEP'T OF JUSTICE, PRISONERS IN 2010 (NCJ 236096) 15—16 (Dec. 2011) (reporting that as of midyear 2010, 656,360 of the 748,728 people being held in local jails were men and that 1,499,573 men but only 112,822 women were under the jurisdiction of state and federal correctional authorities).
36. Corley, *supra* note 6, at 106; see also Yvonne Jewkes, *Men Behind Bars: "Doing" Masculinity as an Adaptation to Imprisonment*, 8 MEN AND MASCULINITIES 44, 53 (2005) (“‘Wearing a mask’ is arguably the most common strategy for coping with the rigors of imprisonment, and all prison researchers will be familiar with the sentiment that inmates feel it necessary to adopt a façade while inside.”).
37. Don Sabo, *Doing Time, Doing Masculinity: Sports and Prison*, in PRISON MASCULINITIES, *supra* note 6, at 61, 65. Indeed, in men's prisons, muscles are arguably “the sign of masculinity.” *Id.* (quoting BARRY GLASSNER, BODIES: WHY WE LOOK THE WAY WE DO (AND HOW WE FEEL ABOUT IT) 114 (1988)).
38. See, e.g., E. Timothy Bleecker & Sarah K. Mumen, *Fraternity Membership, the Display of Degrading Sexual Images of Women, and Rape Myth Acceptance*, 53 SEX ROLES 487, 492 (2005) (citing research “reveal[ing] differences in attitudes and behaviors between fraternity and non-fraternity men that are reflective of acceptance of hypermasculinity” and finding that “[f]raternity men report a belief in male dominance and the inferiority of women” and “use language and possess pictures of women that are judged as degrading”); Donald L. Mosher & Silvan S. Tomkins, *Scripting the Macho Man: Hypermasculine Socialization and Enculturation*, 25 J. SEX RES. 60, 74 (1988) (describing the “macho ritual” following “boot camp in the military” during which “[t]he recruit, shorn of his civilian dignity [is] hazed as a coward, a faggot, a mama’s boy, and the like, [and] undergoes an ordeal,” after which he “assume[s] his new military identity as a warrior” and celebrates by “go[ing] to the bar, get[ting] drunk, get[ting] laid, get[ting] into a fight with an outgroup member, and do[ing] something daring”); Megan N. Schmid, Comment, *Combating a Different Enemy: Proposals to Change the Culture of Sexual Assault in the Military*, 55 VILL. L. REV. 475, 492 (2010) (“[T]he military distances itself from persons perceived as not masculine, such as women and homosexuals, which may explain the restrictions on these groups. . . . As an example, drill instructors at boot camp put down male recruits by feminizing them, calling them ‘pussies,’ ‘sissies,’ or ‘girls,’ to teach them that ‘to be degraded is to be female.’”); Christine Sgarlata Chung, *From Lily Bart to the Boom-Boom Room: How Wall Street’s Social and Cultural Response to Women Has Shaped Securities Regulation*, 33 HARV. J.L. & GENDER 175, 180-81 (2010) (“In Wall Street lore, the movers and shakers of the securities markets are almost invariably men—they are the ‘masters of the universe,’ the ‘Big Swinging Dicks,’ the regulators, the decision-makers, and even the scoundrels thought to have shaped the markets and our system of securities regulation. Women, by contrast, are portrayed as social and cultural outsiders . . . presumed to lack the

skills and characteristics necessary to navigate Wall Street.”); Valentine M. Moghadam, *Women, Gender, and Economic Crisis Revisited*, 10 PERSP. ON GLOBAL DEV. & TECH. 30, 37 (2011) (“The masculinist institution par excellence may be the military, but hyper-masculinity is also a defining feature of the corporate domain—with its risk-takers, rogue traders, reckless speculators, and manipulative financiers.”).

39. There is a direct connection here to Elijah Anderson’s “code of the street,” which governs life for many men in custody when they are free. This makes the transition from hypermasculine performance on the streets to hypermasculine performance in prison a seamless one:

At the heart of the code is the issue of respect—loosely defined as being treated “right” or being granted one’s “props” (or proper due) or the deference one deserves. . . . The rules of the code in fact provide a framework for negotiating respect. With the right amount of respect, individuals can avoid being bothered in public. This security is important, for if they are bothered, not only may they face physical danger, but they will have been disgraced or “dissed” (disrespected).

ELIJAH ANDERSON, *CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY* 10, 33-34 (1999).

40. See Haney, *supra* note 8, at 135 (“In many ways, maintaining some semblance of self esteem in prison requires [men in this position] to do whatever they can do in order to avoid becoming even *more* ‘failed or fallen.’”). Indeed, for many people in custody, respect of this form may be the only respect they will ever enjoy. See Telephone Interview with Cameron Saul, Case Manager, Tarzana Treatment Ctr. (Oct. 27, 2011) (describing a friend who preferred the gang life in prison to freedom, since “on the streets,” he is “nobody” and “get[s] no respect,” whereas in prison, [he has] power . . .”).
41. Int. 140, at B9.
42. As one of my respondents recalled, “there was a time when a couple of the inmates tried to turn it into a political thing and they tried to segregate it with Blacks, Whites and it didn’t fly. It didn’t fly.” Int. 71, at A7. Another of my respondents explained that active gang members “are not taken seriously in [K6G] . . . [I]f they are causing too much of a problem, Bloods or Crips, [or] whichever, I’m pretty sure we would probably whup them . . . to stop problems for everybody.” Int. 119, at B12; see also Int. 89, at C3 (“K6Gs are usually nicer than people in mainline. You know, you ain’t got nothing to prove. There’s no stripes in the K6G dorm, you know, not a bunch of testosterone . . . unchecked.”).
43. See Int. 119, at B2 (“I don’t have to put up any front [in K6G] . . . I don’t have to alter my attitude or tell a fake jailhouse story. I can just be myself.”); Int. 79, at E1 (“People [in K6G] are more free to be who they are.”).
44. Int. 47, at D7–8.
45. *Id.* at D8.
46. K6G’s “easy-going program” is a big part of what makes it so appealing to many men with a long history of time in GP, who feel the need for a break from the gang life that governs life in the rest of the Jail.
47. See *supra* notes 20, 21. See also Hartman, *supra* note 21, at 2 (“In every jail and juvenile camp I learned the same lesson. No one ever wanted to know what I did for a living; they wanted to see if I was predator or prey. Shoved against a wall, surrounded in a dark alley, looking into the barrel of a battered service revolver, I always got the same message: Will you stand up and fight or will you bow down?”).
48. See Dolovich, *supra* note 7, at 11–19 (explaining the process by which weaker prisoners “hook up” with more powerful prisoners in a protective pairing).

49. If the specifics of that emergent culture reflect in some way the sexual identity of its residents, they are still best understood not as the *cause* of the collective feeling of safety and security in the unit, but as its *effects*.
50. See Jeannie Suk, *Redistributing Rape*, 48 AM. CRIM. L. REV. 111, 116 (2011). To the contrary, “the phenomenon of gay masculinity is well known.”
51. Indeed, more than once during my research, I was treated to a demonstration of just how easily some men—even those who, given the choice, would prefer to perform something of a stereotypical gay identity—can switch into hard-core gangster mode. In one such case, my informant explained that were he sent to GP and forced to assume a gangster persona, it would be no different for him than life in the streets, since as a member of a local “set” of a well-known national gang, he perpetually performed this identity with his “homeboys” when he was free. In this culture, everyone, regardless of sexual orientation, faces pressure to perform an exaggerated version of the hegemonic masculine ideal to avoid the aspersions of weakness that lead to victimization.
52. In my interviews, I asked two related questions: *Are there any gang members in K6G?* and *Are there any gang politics in K6G?* See Dolovich, *supra* note 7, at 106 qq.105–06. My subjects unanimously answered the former question in the affirmative and the latter in the negative.
53. Again, for the reasons provided above, it is mistaken to imagine that no one in K6G is able to successfully perform a hypermasculine identity. To the contrary, as I have discussed elsewhere, the nature of the unit’s admissions criteria, which focus on sexual identity rather than one’s ability to handle oneself on the mainline, makes the program very likely to be overinclusive as to its protective purpose. See Dolovich, *supra* note 7, at 39.
54. Moreover, given the stigma attached to being gay in prison and in the hypermasculine culture of the gangs in particular, it may be that the gang members one finds in K6G are less able to enforce the behavioral code of GP since they may have less “juice” within the gang structure as a whole and thus may be—or may be believed to be—weaker than their straight colleagues. This relative weakness, whether real or simply perceived, may thus undermine from the get-go any efforts by gang members in K6G to rule the dorms. On the other hand, even if there is something to this notion, given the gangs’ desire to enlarge their sphere of influence, they may yet be inclined to stand up for their colleagues in K6G, notwithstanding the averred homosexuality of the gang members in K6G. Were it indeed the case that gang members in K6G suffer the equivalent of being cut loose or diminished in status and support because of their sexual identity, and were this process to contribute appreciably to the difference between K6G and a GP, it would suggest that prison and jail administrators committed to increasing the safety of their GP units should redouble their efforts to disrupt coordinated gang activity. I am grateful to Justin Levitt for raising this fascinating issue, which merits further inquiry.
55. This explanation too trades on stereotypes; it suggests that gay men and trans women—being “soft”—would prefer a space like K6G, whereas heterosexual men would prefer to live in a context defined by hypermasculine performance. This way of construing the matter is problematic in two related respects: (1) it frames the undoubted preferences of people in K6G for a less pressured environment as somehow a function of insufficient toughness, and (2) it frames a preference for the culture of GP as the mark of a “real man.”
56. Haney, *supra* note 8, at 124.
57. At this point, some readers may start considering how to calculate the proportion of dissenters required to shift the dynamics of a hypermasculine culture to one in which people would feel freer to relax and be themselves. Frameworks for approaching this

puzzle suggested by readers of earlier drafts include game theory (and specifically the “stag hunt” game, *see generally* Robert van Rooij, *Book Review*, 85 *STUDIA LOGICA* 133, 133–36 (2007) (reviewing BRIAN SKYRMS, *THE STAG HUNT AND THE EVALUATION OF SOCIAL STRUCTURE* (2003))), social network theory, social capital theory, and social ecology. I thank Alex Stremitzer, Joe Doherty, and Daria Roithmayr for these suggestions. My sense is that each of these frameworks has something interesting to offer to make sense of the dynamics I describe, and I hope others will be moved to undertake such analyses. Whatever perspective one adopts, it will be impossible to understand the persistence of GP’s culture of hypermasculinity without recognizing the deep collective fear of nonconformity that exists among prisoners, and the relationship between this fear and the institutional failure to ensure the physical safety and security of the people in custody. My goal in this Article is to illuminate that connection, which, as I have sought to show, must rely more on ethnography than on abstract theoretical frameworks, at least in the first instance.

58. The full version of this Article also addresses a fourth possible explanation: that it is the *men in GP* who, because of their sexual orientation, can’t or won’t conform to the norms of life in K6G. It argues that, even if a GP dorm full of heterosexual-identified men who felt safe enough to leave off the gang politics and hypermasculine posturing may ultimately look very different than K6G, life in such a dorm would necessarily be an improvement over the current GP experience—even if the only difference were an easing of pressure on unit residents and a measure of freedom from the fear and anxiety that currently attend life in many men’s general population units.
59. *See* Dolovich, *supra* note 7, at 15–17 (explaining the relationship between this process and the hypermasculine culture of GP); Rideau, *supra* note 4, at 75 (explaining that, in the Louisiana prison system, rape is generally referred to as “‘turning out,’ a nonsexual description that reveals the nonsexual ritualistic nature of what is really an act of conquest and emasculation, stripping the male victim of his status as a ‘man’ [and] redefin[ing] him as a ‘female’ in this perverse subculture”).
60. Suk, *supra* note 50, at 117.
61. Rachel Wyatt, *Male Rape in U.S. Prisons: Are Conjugal Visits the Answer?*, 37 *CASE W. RES. J. INT’L L.* 579, 594 (2006). As Sykes observed:

Like most men, the inmate must search for his identity not simply within himself but also in the picture of himself which he finds reflected in the eyes of others; and since a significant half of his audience is denied him, the inmate’s self-image is in danger of becoming half complete, fractured, a monochrome without the hues of reality. James E. Robertson, *Cruel and Unusual Punishment in United States Prisons: Sexual Harassment Among Male Inmates*, 36 *AM. CRIM. L. REV.* 1, 13 (1999) (quoting GRESHAM M. SYKES, *THE SOCIETY OF CAPTIVES* 71, 71—72 (1958)).
62. *See generally* Brenda V. Smith, *Rethinking Prison Sex: Self-Expression and Safety*, 15 *COLUM. J. GENDER & L.* 185 (2006).
63. Most obviously, these reasons include the need for gender segregation in custody and the fact that, even assuming gender integration of some sort, the men would still greatly outnumber the women.
64. Sykes, *supra* note 61, at 71.
65. Wyatt, *supra* note 61, at 597; *see also id.* at 598 (“There is also evidence that prison systems in other countries successfully use conjugal visits to lower rates of inmate sexual assault.”).

66. This is the approach recommended by the National Prison Rape Elimination Commission and adopted by the U.S. Department of Justice in the National PREA Standards. *See* 28 C.F.R. § 115.41-42 (2012).
67. Admittedly, to the extent that GP's worst aspects do stem from sexual deprivation, it may not be possible to erase the threat of predation entirely, since even were all possible steps taken to protect victims and deter predatory behavior, some men may still be driven by their sexual needs to seek to "feminize" other prisoners, by force if necessary, to transform them into desirable sexual partners. (I am grateful to Doug NeJaime for pushing me to recognize this point.) Still, deploying these strategies would surely mitigate whatever harm might result from this situation—an undeniably positive result.
68. *See* Carolyn Newton, *Gender Theory and Prison Sociology: Using Theories of Masculinities to Interpret the Sociology of Prisons for Men*, 33 *HOW. J. CRIM. JUST.* 193, 197 (1993) (quoted in Robertson, *supra* note 61, at 12).
69. Consider this excerpt from an interview conducted by criminologist Lonnie Athens, with a boy in his mid-teens who had recently been convicted of armed robbery: After I busted that dude's head open, the principal kick me out of school for the rest of the year.... Everybody, my people and close friends, thought I had gone too far on the dude.... But nobody in the school or around my neighborhood would fuck with me after that. People said, "James is crazy. Don't go heads up at the dude like that because he will fuck you up." Most people made sure that they gave me plenty of space and stayed mellow around me. They paid me more respect and said "Hi" to me when I walk by. People may have thought I went too far on that dude, but I later knew what I did was right. It must've been right because nobody was giving me shit anymore. The way people acted made me come alive. It swelled up my head.
- RICHARD RHODES, *WHY THEY KILL: THE DISCOVERIES OF A MAVERICK CRIMINOLOGIST* 134 (1999) (quoting LONNIE ATHENS, *THE CREATION OF DANGEROUS VIOLENT CRIMINALS* 78-79 (1992)); *id.* at 135 (observing that people in the late stages of becoming a dangerous violent criminal may find themselves "a welcome and desired companion among malevolent groups for whom having violent reputé is a social requirement") (quoting ATHENS, *supra*).
70. *See e.g.*, Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 *N.Y.U. L. REV.* 881, 932-34 (2009) (describing the way the culture of the prison teaches prison officials to see prisoners as "a breed apart, . . . the scum of the earth") (quoting KELSEY KAUFFMAN, *PRISON OFFICERS AND THEIR WORLD* 231 (1988)).
71. *See* Dolovich, *supra* note 7, at 26 (explaining how K6G's classification officers interpret the requirement that people classified to K6G be "homosexual"); *see also* Stipulation and Request for Dismissal Order at 4, *Robertson v. Block*, No. 82-1442 (C.D. Cal. July 17, 1985).
72. For further discussion of this feature of K6G, and responses to objections that might be raised to the program on this basis, *see* Dolovich, *supra* note 7, at 54–87.
73. For detailed discussion of the Jail intake process of which this question forms a part, *see* Dolovich, *supra* note 7, at 27–29.
74. Indeed, in some ways they are treated even worse than other people in the Jail, since their status as K6Gs—publicly announced through their distinctive light blue uniforms—frequently exposes them to verbal harassment when they are out of the dorms, both by GPs and by homophobic deputies. *See* Dolovich, *supra* note 7, at 57–58. For discussion of the color-coded uniforms, and an explanation as to why, despite their obvious

drawbacks, it is still in the best interests of people in the unit that their uniforms remain distinctive, see Dolovich, *supra* note 7, at 61–62.

75. This is not to celebrate those who indulge every impulse to complain, to argue, or to pick fights with others in the unit. But these are normal human behaviors, and it is through dealing with the costs of violating collective norms of mutual respect—as happens when people in K6G treat others badly and are criticized for it by others in the dorms—that one grows as a moral subject. These interactions are relatively rare in GP, where the reigning moral code is very different than that which governs in the free world. But this is the stuff of real life—learning through interactions with others how one should behave. And this is as it should be in a community of human beings who must learn to get along with one another.
76. Senior Deputy Randy Bell and Deputy Bart Lanni (K6G’s supervising officers) do their best to provide stimulating and challenging programming for the K6Gs. But even they cannot overcome the fact that available opportunities for people in the unit—most of whom rarely leave the dorms—are necessarily deeply diminished.
77. *See e.g.*, HARTMAN, *supra* note 21, at 72-75 (describing how the possibility of being closer to the woman he loved—and who eventually became his wife—inspired him to leave behind the thug life he had found in Folsom prison and to pursue a psychologically healthier path).