

The crisis of detention and the politics of denial in Latin America

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Abstract

This article assesses the causes of the crisis of detention in Latin America. The authors argue that this crisis, which manifests itself in overpopulation of the region's prison systems, deficient infrastructure, and prison informality and violence propelled ultimately by political processes, is mostly related to, on the one hand, disastrous human rights conditions inside Latin American prisons, and on other, the political denial of these conditions. This denial produces a state of institutional abandonment that is preserved by the interests of politicians and bureaucrats, who are engaged in denying prison violence and human rights abuses while simultaneously calling for more punishment and imprisonment.

Keywords: prison conditions, Latin America, violence, denial, human rights, international strategies.

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Introduction

On Sunday, 1 January 2017, the Brazilian city of Manaus witnessed an outbreak of violence. It was, however, not on the streets of the city that the violence – lethal violence, consuming the lives of at least fifty-six people – erupted. Rather, it happened behind the walls of the Anísio Jobim Penitentiary Complex, which was inaugurated in 1999 to replace a semi-open prison farm 30 kilometres away from the downtown area, and which was privatized in 2014. As news agencies reported, the violence began with a prison riot that, “with decapitated bodies thrown over prison walls”, culminated in the “bloodiest prison revolt in more than two decades in Brazil’s overcrowded penitentiary system”.¹ The violence that broke out in the prison, and which was not stopped by the police – who were still in charge of order and security – for more than seventeen hours, resulted from turf wars between two rival drug gangs, the Família do Norte and the Primeiro Comando da Capital. In the aftermath of the riot it became apparent that the violence had been planned in a systematic way. A network of tunnels was discovered, and during “the days before the uprising, prison guards had come to believe that drug trafficking groups were smuggling in firearms, some of which were collected by police after the violence subsided”.² All responsibility was put on the prisoners themselves. The private contractors involved in managing the prison complex claimed that public authorities were responsible for internal discipline, order and security, including riot control.³ Brazil’s minister of justice, Alexandre de Moraes, in turn blamed the victims, telling the press one day after the riot ended through negotiations: “The inmates had established with the [public] administration [of the prison] a promise that everything would run smoothly throughout the holidays and there wouldn’t be any problems. They didn’t keep their promise, but you can’t expect much from criminals, can you?”⁴

Far from being a sporadic and isolated incident, this episode of prison violence and the structural conditions that allowed it to happen – including the non-intervention by the police and informal deals between inmates and the prison administration, as well as the denial of the responsibility by the latter – reflect, in a paradigmatic way, the situation in Brazil’s contemporary prison system. It is a system where violence in its manifold manifestations – structural, institutional, physical and symbolic – is the norm rather than the exception:

- 1 Alonso Soto, “Brazil Drug Gangs Spark Prison Riot, 56 Dead”, *Reuters*, 2 January 2017; Nátalia Lucas, “Detentos foram esquartejados e decapitados em briga de facções em presídio de Manaus”, *O Globo*, 2 January 2017.
- 2 Jill Langlois, “126 Inmates Still at Large in Brazil after a Prison Riot that Left 56 Dead”, *Los Angeles Times*, 6 January 2017.
- 3 “Umanizzare esclarece o seu papel”, available at: www.umanizzarebrasil.com.br/noticias/umanizzare-esclarece-o-seu-papel/ (all internet references were accessed in October 2017).
- 4 Euan McKirdy and Jay Croft, “At Least 56 Killed in Brazil Prison Riot over Drug Turf, Officials Say”, *CNN*, 3 January 2017, available at: <http://edition.cnn.com/2017/01/02/americas/brazil-prison-riot/>.

91 Part of the reason prison violence is so common in Brazil is that conditions in
92 most of the country's penitentiaries are barbarous. There are an estimated
93 656,000 incarcerated people in state prisons, where there is officially space for
94 less than 400,000. Yet roughly 3,000 new inmates are added to overcrowded
95 penitentiaries each month. The prison population has increased by more
96 than 160 percent since 2000. It's for good reason that a former justice
97 minister reportedly said he'd rather die than spend time in a Brazilian
98 prison. Brazil's state prisons are overseen by drug gangs that act as judges,
99 jurors and executioners. Most prisons are divided up among competing
100 gangs. The government is only nominally in control. Experts describe drug
101 factions as a "parallel state." Gangs have long recruited their rank and file
102 from prisons and organize trafficking and racketeering businesses from
103 within their walls. Research has found that 70 percent of inmates who leave
104 prison find their way back.⁵

105 While in light of this scenario it would be fair to say that the contemporary Brazilian
106 prison system is in crisis, when seen from a more regional perspective, neither
107 (lethal) prison violence nor the structural features that contribute to its
108 normalization are unique to Brazil. Rather, throughout the continent, prison
109 systems can be described as being "in crisis", a fact to which we refer in this
110 article as the *crisis of detention in Latin America*. It is the purpose of this article
111 to assess the causes and consequences of this crisis.

112 This article argues that the crisis of detention in Latin America, which
113 manifests itself most clearly in the overpopulation of the region's prison systems,
114 deficient infrastructure, ongoing human rights abuses and prison violence, is
115 mostly related to, on the one hand, disastrous human rights conditions inside
116 Latin American prisons, and on the other, the *political denial* of these conditions.
117 As the latter produces a state of institutional abandonment that is preserved by
118 the interests of politicians and the judiciary who are engaged in denying prison
119 violence and human rights abuses while promoting more punishment, the two
120 sides of the crisis of detention in the region are deeply linked. They fuel a
121 mutually reinforcing cycle of crisis-as-denial that, so far, has been crucial to
122 limiting the impact of prison reform efforts in the region. To break out of this
123 cycle, we claim that a politics of non-denial is needed which restores the human
124 (and legal) rights of prisoners without relegating inmates to passive objects of
125 increasingly securitized "humanitarian interventions".

126 The authors elaborate this argument in three steps. First, we offer an
127 overview of the Latin American crisis of detention by highlighting the growth of
128 the region's inmate populations, the prevailing informality and violence inside
129 Latin American prisons, and the social composition of the prison population.
130 Next, we situate these developments in their political and penal bureaucratic
131 context. Specifically, we highlight the somewhat paradoxical role of democratization,
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134 5 Robert Muggah and Ilona Szabó de Carvalho, "Brazil's Deadly Prison System", *New York Times*, 4 January
135 2017.

party politics and neoliberalization in triggering a “punitive turn” in the region that led to the emergence of criminal justice penal State reform and expansion combined with penal populism, and gave rise both to an upsurge in incarceration rates and to the political, judicial and expert denial of prison violence and human rights violations in Latin American institutions of confinement. In a third step, the authors turn to the crucial obstacles of and for prison reform by pointing towards sites of contestation and denial of human rights abuses inside Latin American prisons, thereby demonstrating how under conditions of politically and judicially produced abandonment, human rights and international fora become elements of last resort for inmates and human rights activists, transforming prisons into targets for humanitarian interventions. These interventions, however, operate according to the tensions of national penal fields, which in most cases leads to a denial of the structural violence of Latin American prison conditions, while still demonstrating a “will to improve”.⁶ In some cases, however, international human rights strategies contribute to policy changes, going beyond a predominantly symbolic concern. This article briefly analyzes how these international actions have been backed or resisted by the efforts of Latin American politicians, judges and even criminal justice reform experts in different national scenarios, leading to the recognition or denial of human rights violations inside the region’s prison system and to changes or continuities in some prison policies. In conclusion, the authors summarize the main findings of the article and highlight the implications and contributions of social-scientific studies for a possible way out of the Latin American crisis of detention, starting with recognizing the social sources and political effects of its denial.

Inside Latin America’s carceral archipelago

For a better understanding of the scope and severity of the crisis of detention in contemporary Latin America, it makes sense to move beyond more spectacular, yet far from exceptional, outbreaks of prison violence, such as the Anísio Jobim riot mentioned above. To this end, this section will analyze the more mundane and “routinized” manifestations of the crisis of the region’s prison systems by highlighting three defining features of Latin America’s carceral landscape: (a) overcrowding, (b) informality and (c) the social composition of the inmate population.

Regarding the first issue, *overcrowding*, it has been widely documented that the last two decades witnessed a dramatic increase in the regions’ prison population,⁷ reflecting what Darke and Karam have termed “the expanding

6 This term is borrowed from Murray Li, *The Will to Improve: Governmentality, Development and the Practices of Politics*, Duke University Press, Durham, NC, 2007.

7 Lucia Dammert and Liza Zúñiga, *Prisons: Problems and Challenges for the Americas*, FLACSO, Santiago de Chile, 2008, pp. 41–66; Sacha Darke and Maria Lúcia Karam, “Latin American Prisons”, in Yvonne Jewkes, Ben Crewe and Jamie Bennett (eds), *Handbook on Prisons*, 2nd ed., Routledge, Abingdon, 2012, p. 462; Manuel Iturralde, “Colombian Prisons as a Core Institution of Authoritarian Liberalism”,

power of punishment” in Latin America.⁸ While the political and economic context factors that triggered this development will be assessed in the next section, before turning to the causal factors behind this process, it is important to take a closer look at some numbers to better illustrate how powerful and pervasive this trend has been – and how much it has contributed to the crisis of detention in the region.

The rise of the region’s prison population is most evident when putting Latin American developments in a global perspective. As the most recent edition of the *World Prison Population List*, the most comprehensive publicly available data on prison population trends, states, while at the global scale the prison population has grown by nearly 20% since 2000, this trend unfolds unevenly, with notable regional differences:

The total prison population in Oceania has increased by almost 60% and that in the Americas by over 40%; in Europe, by contrast, the total prison population has decreased by 21%. The European figure reflects large falls in prison populations in Russia and in central and eastern Europe. In the Americas, the prison population has increased by 14% in the USA, by over 80% in central American countries and by 145% in south American countries.⁹

Seen from a global perspective, Latin America is the world region that witnessed the highest growth rates of its prison population in the new millennium. When breaking these numbers down to the ratio of prisoners per 100,000 inhabitants, Latin America witnessed an increase from 161 at the beginning of the millennium¹⁰ to 288 in 2015.¹¹ With the exceptions of Guatemala (121), Haiti (97) and Bolivia (122),¹² all Latin American countries by far exceed the global median of 144, including extreme cases such as Cuba (510), El Salvador (492), Belize (449), Panama (392) and Brazil (302).¹³

This massive prisoner intake, however, has not been matched by a simultaneous expansion of the region’s prison facilities, prison budgets and existing institutional infrastructures, thus leading to serious overcrowding. In fact, “[o]vercrowding has reached unprecedented levels because the increase in incarceration has far outstripped any increase in physical capacity” of the

Crime, Law and Social Change, Vol. 65, No. 3, 2016, pp. 139–140; Paul Hathazy and Markus-Michael Müller, “The Rebirth of the Prison in Latin America: Determinants, Regimes and Social Effects”, *Crime, Law and Social Change*, Vol. 65, No. 3, 2016, p. 114–121; Markus-Michael Müller, “The Rise of the Penal State in Latin America”, *Contemporary Justice Review*, Vol. 15, No. 1, 2012, pp. 64–67.

8 S. Darke and L. Karam, above note 7, p. 462.

9 Roy Walmsley, *World Prison Population List*, 11th ed., Institute for Criminal Research Policy, Birkbeck, University of London, 2016, p. 2, available at: www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_11th_edition_0.pdf.

10 Mark Ungar and Ana Laura Magaloni, “Latin America’s Prisons: A Crisis of Criminal Policy and Democratic Rule”, in Marcelo Bergman and Laurence Whitehead (eds), *Criminality, Public Security and the Challenge to Democracy in Latin America*, University of Notre Dame Press, Notre Dame, IN, 2009, p. 224.

11 This number is based on data provided by the *World Prison Population List*, above note 9, including Caribbean countries.

12 In the case of Haiti, this extremely low number should mostly be seen as a reflection of the near-total destruction of all public infrastructure, including all the country’s prisons, after the 2010 earthquake.

13 *World Prison Population List*, above note 9, pp. 5–7.

region's penitentiaries.¹⁴ Currently, *all* Latin American prisons are overcrowded, and "all of them, with only one single exception, [suffer] from critical overcrowding (a density of 120 per cent or more)".¹⁵

Informality, the second defining feature of the region's prison systems and its crisis, is a direct consequence of overcrowding. Informality, to be sure, has long been a defining feature of Latin American prisons, but the increase in the region's inmate population during the last two decades has triggered a veritable institutionalization of informality. In contemporary Latin America, it seems, informality is the norm rather than the exception regarding how prisons function – and this functioning is therefore dominated by the existence of "socially shared rules, usually unwritten, that are created, communicated, and enforced outside of officially sanctioned channels".¹⁶ Although the actual degree of informality is context-dependent, and some of the region's prison systems, such as those of Argentina and Chile, have witnessed a strengthening of their formal-institutional capacities to impose and enforce order,¹⁷ it is nonetheless undeniable that informality is part and parcel of the way most prisons in the region operate. Taking a closer look at this topic is therefore indispensable for understanding the crisis of detention in the region.

Existing research has documented how the precarious infrastructural conditions in the region's prison systems mean that inmates and their families have to develop informal strategies for getting access to basic services such as food, clothing or hygiene products. Usually this implies bribing prison guards.¹⁸ In fact, to satisfy their basic everyday needs, prisoners are dependent upon prison black markets "that are protected, 'taxed' and operated by the prison personnel, in collaboration with inmates, who additionally manage the illegal trafficking of weapons, cell phones, alcohol, drugs or prostitution inside the prisons as well as the systematic extortion of prisoners".¹⁹ It is telling, in this regard, that

14 M. Ungar and A. L. Magaloni, above note 10, p. 226.

15 Elías Carranza, "Prisons in Latin America and the Caribbean: What to Do, What not to Do", United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Resource Material Series No. 94, Fuchu, 2014, p. 193, available at: www.unafei.or.jp/english/pdf/RS_No94/No94_VE_Carranza.pdf.

16 Gretchen Helmke and Steven Levitsky, "Informal Institutions and Comparative Politics: A Research Agenda", *Perspectives on Politics*, Vol. 2, No. 4, 2004, p. 727.

17 Paul Hathazy, "Remaking the Prisons of the Market Democracies: New Experts, Old Guards and Politics in the Carceral Fields of Argentina and Chile", *Crime, Law and Social Change*, Vol. 65, No. 3, 2016; P. Hathazy and M.-M. Müller, above note 7, p. 122.

18 See, for instance, Jim Cavallaro, Jacob Kopas, Yukyan Lam, Timothy Mayhle and Soledad Villagra de Biedermann, *Security in Paraguay: Analysis and Responses in Comparative Perspective*, Harvard Law School, Human Rights Program, Cambridge, MA, 2008; L. Dammert and L. Zúñiga, above note 7; Lirio Gutierrez Rivera, *Territories of Violence: State, Marginal Youth, and Public Security in Honduras*, Palgrave Macmillan, Basingstoke, 2013; P. Hathazy and M.-M. Müller, above note 7, p. 130; M.-M. Müller, above note 7; Mark Ungar, "Prisons and Politics in Contemporary Latin America", *Human Rights Quarterly*, Vol. 25, No. 4, 2003.

19 Markus-Michael Müller, "The Universal and the Particular in Latin American Penal State Formation", in Peter Squires and John Lea (eds), *Criminalisation and Advanced Marginality: Critically Exploring the Work of Loïc Wacquant*, Policy Press, Bristol, 2012.

Venezuelans, for instance, refer to a prison sentence as “*pagando condena*” (literally, “paying [a] sentence”).²⁰

Informal relations between prison authorities and inmates (and their families), however, extend beyond the realm of black markets. They also define the way many prisons in the region are governed. As we have argued elsewhere, the “numerical imbalance between guards and inmates has produced a form of prison governance in which public officials systematically enlist prisoners as auxiliaries to perform basic prison functions”. This implies that “the reproduction of the internal social order is left to prisoners’ organizations that govern cell-blocks, cells and/or dormitories”. As a consequence of this, it is often not the State but inmates themselves who govern Latin American prisons (including the use of force and the application of punishment), in particular those inmates endowed with substantial access to political and economic power and influence.²¹

One important consequence of this way of informally co-produced prison governance in Latin America is that many prisons in the region contribute to the reproduction of the basic security problem they are expected to solve: organized criminality and the violence related to it. In fact, criminal organizations and organized criminal actors in the region, such as drug trafficking organizations or gangs, use their control over carceral spaces to strengthen their organizations and keep their businesses running beyond the walls of the prisons, often with the explicit consent of the prison authorities. Thus, overpopulated and, at least from a formal perspective, ungoverned prisons have turned into an important element of the criminal infrastructure. They allow for the reproduction and even strengthening of criminal organizations and the maintenance of their illicit activities,²² while simultaneously fuelling the cycle of rising prison rates stemming from the ongoing presence of organized crime and drug trafficking throughout most of Latin America, and the harsher criminal polices meant to suppress these activities (see below).

The third feature of contemporary prison systems in Latin America that is illustrative of the crisis of detention in the region is the *social composition* of the inmate populations. It is here that the crisis of the region’s prison systems probably becomes most visible (at least when seen from a broader macro-social perspective), as the region’s prisons are actively contributing to and reflecting the social, economic and political inequality found in the world’s most unequal region. We should recall at this point that

20 Christopher Birkbeck and Neelie Pérez-Santiago, “The Character of Penal Control in Latin America: Sentence Remissions in a Venezuelan Prison”, *Criminology and Criminal Justice*, Vol. 6, No. 3, 2006, p. 290.

21 P. Hathazy and M.-M. Müller, above note 7, p. 121. See also Camila Nunes Dias and Sacha Darke, “From Dispersed to Monopolized Violence: Expansion and Consolidation of the Primeiro Comando da Capital’s Hegemony in São Paulo’s Prisons”, *Crime, Law and Social Change*, Vol. 65, No. 3, 2016; L. Gutierrez Rivera, above note 18; M.-M. Müller, above note 7, pp. 69–70; Roy D. King and Bruna Valensia, “Power, Control, and Symbiosis in Brazilian Prisons”, *South Atlantic Quarterly*, Vol. 113, No. 3, 2014.

22 José Miguel Cruz, “Central American Maras: From Youth Gangs to Transnational Protection Rackets”, *Global Crime* Vol. 11, No. 4, 2010; L. Gutierrez Rivera, above note 18; Graham Denyer Willis, *The Killing Consensus: Police, Organized Crime, and the Regulation of Life and Death in Urban Brazil*, University of California Press, Oakland, CA, 2015.

Latin America remains the most unequal region in the world. In 2014 the richest 10% of people in Latin America had amassed 71% of the region's wealth. If this trend continues, according to Oxfam's calculations, in just six years' time the richest 1% in the region will have accumulated more wealth than the remaining 99%.²³

This inequality, in turn, is both contributing to and reflecting what has been termed the "unrule" or "misrule" of law in Latin America – that is, people's capacity to influence the law in their favour according to access to political, social and economic power. "In such circumstances, law has little to do with notions of neutral or fair regulation. Rather, it ensures a different norm: the maintenance of privilege among those who possess extra-legal powers to manage politics [and] bureaucracy."²⁴ This transforms the "misrule of law" into an "effective, though perverse, means of rule",²⁵ and implies that the formal and informal "privileges" in Latin American prisons are "reserved" for more powerful and influential prisoners. The latter, however, is a relative category as most inmates, due to the socio-economic selectivity of the misrule of law outside the prison, "where the possession of substantial amounts of economic, social and political capital guarantees that more powerful actors can take advantage of high levels of judicial impunity and therefore the evasion of prison sentences",²⁶ are usually not the most dangerous and powerful criminals but the poorest – often those who have committed minor street crimes or drug-related offences.²⁷

The latter aspect, social composition, already indicates that the structural features and manifestation of the crisis of detention in the region are inseparable from the broader political context in which the region's prison systems are embedded. The analysis of this context and how it has contributed to the crisis of detention in contemporary Latin America will be the focus of the next section.

Tracing the politico-institutional origins of the Latin American prison crisis and its denial

How can the constant violations of basic civil and human rights in the overcrowded, informal and discriminatory prisons of Latin America coexist with the region's turn

23 Alicia Bárcena, "Latin America is the World's Most Unequal Region. Here's How to Fix It", Economic Commission for Latin America and the Caribbean, 2016, available at: www.cepal.org/en/articles/2016-latin-america-worlds-most-unequal-region-heres-how-fix-it.

24 Paulo Sergio Pinheiro, "The Rule of Law and the Underprivileged in Latin America: Introduction", in Juan E. Mendez, Guillermo O'Donnell and Paulo Sergio Pinheiro, *The (Un)Rule of Law and the Underprivileged in Latin America*, University of Notre Dame Press, Notre Dame, IN, 1999.

25 James Holston, *Insurgent Citizenship: Disjunctions of Democracy and Modernity in Brazil*, Princeton University Press, Princeton, NJ, 2008, pp. 228–229.

26 M.-M. Müller, above note 7, p. 68.

27 Elena Azaola and Marcelo Bergman, "The Mexican Prison System", in Wayne A. Cornelius and David A. Shirk (eds), *Reforming the Administration of Justice in Mexico*, University of Notre Dame Press, Notre Dame, IN, 2007, p. 112; Fernando Carrión "¿Por qué todos los caminos conducen a la miseria del panóptico?", *URVIO: Revista Latinoamericana de Seguridad Ciudadana*, Vol. 1, No. 1, 2007, pp. 1, 5–9.

361 toward democratic politics, including the related democratic criminal justice and
362 prison reforms efforts of the last three decades? Understanding this relationship
363 between post-authoritarian political development and the crisis of detention in
364 the region is crucial, considering that, paradoxically, the same processes of
365 political liberalization and democratic prison reform contributed decisively to
366 expanding prison systems, to the deterioration of prison conditions in the region,
367 and to the political, judicial and administrative denial of the crisis of detention.
368 As noted by Stanley Cohen, in the context of the Latin American crisis of
369 detention, the “social conditions from which atrocities originate fuse with official
370 techniques of the denial of those realities”.²⁸ To understand the continuity of
371 denial and the crisis of detention produced by it, we will now re-examine the
372 political, legal and administrative conditions that contributed to the atrocious
373 prison conditions in Latin America and the ways in which they converge with
374 official techniques of denial. Expanding on an analysis that we started elsewhere,
375 we will argue that the increasing “power of punishment” and the resulting
376 deterioration of prison conditions are directly related to (a) political regime
377 changes in the region, (b) democratic criminal justice reform processes, and (c)
378 international drug control policies.

379 380 The dark side of political democratization and criminal justice 381 reform: Prison expansion and deterioration 382

383 As we have argued elsewhere,²⁹ *political regime change*, such as the democratic
384 transition processes that started in the 1980s in Peru (1980), Argentina (1983),
385 Brazil (1985) and Chile (1990), and which continued during the 1990s, was
386 accompanied by an increase in the region’s prison population, leading to
387 overpopulation, the exacerbation of internal violence, and a general deterioration
388 of prison conditions. Prison expansion and deteriorating prison conditions also
389 accompanied transitions from one-party rule to multi-party systems, as in the
390 case of Mexico,³⁰ and the turns to post-neoliberal regimes, such as those of
391 Venezuela and Ecuador.³¹ These political upheavals (re)constituted the electoral
392 political systems of the affected countries. And, in combination with structural
393 economic transformation processes towards, or away from, neoliberalism, they
394 gave rise to new political economies which, in turn, impacted the ways in which
395 the transformations of the party systems and the distribution of power in the
396 political system at large unfolded. In general, political regime change coincided
397 with the politicization of common and violent crime that was in turn magnified
398 by the growing “discovery” of these topics by the liberalized press after
399 democratic transitions, the concentration of media groups under neoliberalism
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401 28 Stanley Cohen, *Estados de negación: Ensayo sobre atrocidades y sufrimiento*, trans. Mary Bellof, 1st ed.,
402 Univesidad de Buenos Aires, Buenos Aires, 2005, p. 11.

403 29 P. Hathazy and M.-M. Müller, above note 7.

404 30 Markus-Michael Müller, “Penalizing Democracy: Punitive Politics in Neoliberal Mexico”, *Crime, Law and
405 Social Change*, Vol. 65, No. 3, 2016.

406 31 Maximo Sozzo (ed.), *Postneoliberalismo y penalidad en América del Sur*, CLACSO, Buenos Aires, 2016.

and the insistence of right-wing civil society groups on the persistence, if not worsening, of high crime rates under democratic or leftist governments.³²

Political regime change and the growing centrality of crime issues in the media and politics allowed new parties and politicians to capitalize on the growing public concerns – to a large extent fuelled by sensationalist media coverage – by promoting punitive politics as the “solution” to the crime problem.³³ In the federal systems of Argentina, Mexico and Brazil – the most populous Latin American countries – for instance, changes in the political system, along with neoliberal policies of State downsizing and decentralization, substantially enhanced the powers and responsibilities of governors and majors.³⁴ In turn, this exposed these political actors to even more citizen pressure to deal with crime and violence, as it was now their duty – along with federal governments – to address such problems.³⁵ In cases of neoliberal structural adjustments, highly punitive politics led to an increase in sanctions and the diffusion of harsh law and order policies, often articulated in the language of “strong hand” (*mano dura*) or “zero tolerance” (*tolerancia cero*), and often as a means to deal with the social and economic consequences of neoliberal policies, such as the growing informalization of many Latin American economies through the *de facto* criminalization of the economic survival strategies of growing parts of the population that were left behind by neoliberal policies.³⁶ Moreover, these punitive policies also served the symbolic purposes of preserving State authority and compensating for the reduction of public spending and economic deregulation.³⁷ Law and order rhetoric, calling for penal-exclusion, “tough on crime” politics, paradoxically also emerged in countries that have veered toward post-neoliberal policies of State-led redistribution and the expansion of social services. A case in point is Venezuela, where after an initial reduction of its prison population, the Bolivarian Revolutionary Government resorted to a highly punitive political agenda in order to deal with its more recent economic crisis, the

32 Paul Hathazy, “Entre la ‘represión’, la ‘prevención’ y la ‘seguridad interior’: Categorías y políticas de seguridad en la pos-transición Argentina”, study presented at workshop on “Estudios sociales sobre delito, policía y violencia: La seguridad en cuestión”, Universidad Nacional de La Plata, 10 April 2017; Guillermo Sunkel, “Medios de comunicación y violencia en la transición Chilena”, *Cuadernos del Foro* ’90, No. 3, 1992; Paul Chevigny, “The Populism of Fear: Politics of Crime in the Americas”, *Punishment and Society*, Vol. 5, No. 1, 2003, p. 79; Yolanda Salas, “Imaginary and Narratives of Prison Violence”, in Susana Rotker (ed.), *Citizens of Fear: Urban Violence in Latin America*, Rutgers University Press, New Brunswick, NJ, 2000.

33 P. Chevigny, above note 32.

34 Marcelo Cavarozzi, *Autoritarismo y democracia (1955–2006)*, Ariel, Buenos Aires, 2006, p. 56, Victoria Rodriguez, “Centralizing Politics vs. Decentralizing Policies in Mexico”, in Menno Vellinga, *The Changing Role of the State in Latin America*, Westview Press, Boulder, CO, 1998.

35 P. Hathazy and M.-M. Müller, above note 7.

36 Markus-Michael Müller, *The Punitive City: Privatised Policing and Protection in Neoliberal Mexico*, Zed Books, London, 2016.

37 P. Chevigny, above note 32; Loïc Wacquant, “The Militarization of Urban Marginality: Lessons from the Brazilian Metropolis”, *International Political Sociology*, Vol. 2, No. 1, 2008; Paul Hathazy, “(Re)Shaping the Neoliberal Leviathans: The Politics of Penalty and Welfare in Argentina, Chile and Peru”, *European Review of Latin American and Caribbean Studies*, No. 95, October 2013.

451 resulting social dislocations as well as new socio-political tensions stemming from a
452 new regime of political exclusion.³⁸

453 The massive process of *penal State-building* is another, and in fact related,
454 contributing factor to the regional trend of prison expansion, notably in the form
455 of police and criminal justice reform initiatives during the last few decades. Police
456 and criminal justice reform efforts in the name of confronting crime in the
457 region's "violent democracies",³⁹ despite their framing in the language of
458 "democracy" or "citizen security", in practice turned into a process of "perverse
459 state formation"⁴⁰ that transformed the region's democratic regimes into
460 "securitizing democracies".⁴¹ These processes expanded the penal powers of Latin
461 American States, increased their sentencing capacities and fuelling a process that
462 we have termed *rule through law*, considered as the transformation of the
463 "impartial character of law and legal processes into political means that, by
464 criminalizing certain practices most often associated with people at society's
465 margins, aim at enhancing the legitimacy of political actors through practices of
466 legal-political exclusion".⁴² The overall consequence of this has been the dramatic
467 expansion of the region's prison population discussed above.

468 These penal State-building efforts are the result of several convergent
469 developments: first, the widely shared *political* assumption that crime constitutes
470 a core problem of Latin American societies that is best addresses not by, for
471 instance, enhancing social welfare, but by punitive law and order policies; second,
472 the related strengthening of judicial capacities after the return of democracy and
473 processes of regime change; and third, proposals made by a new class of criminal
474 justice reformers that preached for the creation (and expansion) of new police
475 forces and criminal courts procedures as solutions for the region's crime and
476 violence problems. In fact, the transitions to democracy and processes of political
477 regime change opened windows of opportunity for police and criminal procedure
478 reform.⁴³ These reforms, reflecting the attempts of new political elites to gain
479 control over police forces and/or judicial bureaucracies, and to address citizen
480 demands for security, substantially expanded policing and judicial processing
481 capacities. Governors and presidents eager to demonstrate their commitment to
482 "citizen security" and their leadership capacity as successful crime fighters
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485 38 Andres Antillano, "Crimen y castigo en la revolución bolivariana", *Cuestiones de Sociología: Revista de*
486 *Estudios Sociales*, No. 10, 2014; Jorge Paladines, "La 'mano dura' de la Revolución Ciudadana (2007–
487 2014)", in M. Sozzo (ed.), above note 31; Martha Lia Grajales and Maria Lucrecia Hernandez,
488 "Chavismo y política penal (1999–2014)", in M. Sozzo (ed.), above note 31.

489 39 Enrique Desmond Arias and Daniel M. Goldstein (eds), *Violent Democracies in Latin America*, Duke
490 University Press, Durham, NC, 2010.

491 40 Jenny Perace, "Perverse State Formation and Securitized Democracy in Latin America", *Democratization*,
492 Vol. 17, No. 2, 2010.

493 41 M.-M. Müller, above note 36, pp. 5–9.

494 42 P. Hathazy and M.-M. Müller, above note 7, p. 116.

495 43 Paul Hathazy, "Democratizing Leviathan: Politics, Experts and Bureaucrats in the Transformation of the
496 Penal State in Argentina and Chile", PhD dissertation, Department of Sociology, University of California,
497 Berkeley, CA, 2013, pp. 260–274; Paul Hathazy, "Punitivism with a Human Face: Criminal Justice
498 Reformers' International and Regional Strategies and Penal-State Making in Argentina, Chile and
499 Beyond", *Kriminologisches Journal*, Vol. 48, No. 4, 2016.

enhanced the numerical strength of police forces, as well as their resources and powers.⁴⁴ Judicial reforms towards an adversarial system put in place new prosecuting organizations and increased the number of courts and prosecutors.⁴⁵ In the process, the idea – held at the beginning of these developments – of enhancing the efficiency of courts by reducing the time taken to make a judgment, and reducing high levels of pre-trial detentions through the introduction of oral procedures, was turned on its head and contributed to the increase of the region’s prison population.⁴⁶

In fact, most of these reforms aimed at reducing police powers and pre-trial detention rates in post-authoritarian settings have been systematically reversed by granting more powers to police and prosecutors to order and decide over custodial detentions, while leaving in place the increased adjudicatory capacities. One outcome of these developments is that human rights institutions and policies have been subordinated to the demands of political actors who call for harsher crime policies, increased penal supervision and control over the criminalized segments of those at society’s margins.⁴⁷ This trend is most visible in the fact that those penal institutions more closely involved in repression – the police and prosecutors – have received more political backing and resources than those institutions in charge of their oversight, such as control judges, public defence services and prison oversight judges.⁴⁸

The progressive subordination of police and justice reforms to the political needs of law and order campaigns and “tough on crime” policies also meant the subordination of activists and experts committed to advancing human rights standards for criminal justice procedures and prison realities. Powerful human rights movements who played an important role during the initial moments of the democratic transitions were actually sidelined by the criminal justice reform policies, mostly due to a refocusing of these reforms on enhanced efficiency and efficacy standards.⁴⁹ In turn, this has relegated concerns over human rights and

44 P. Hathazy and M.-M. Müller, above note 7; John Bailey and Lucia Dammert, *Public Security and Police Reform in the Americas*, University of Pittsburgh Press, Pittsburgh, PA, 2006; Hugo Frühling, “Police Reform and the Process of Democratization”, in Hugo Frühling, Joseph S. Tulchin and Heather A. Golding (eds), *Crime and Violence in Latin America: Citizen Security, Democracy, and the State*, Woodrow Wilson Center Press, Washington, DC, 2003.

45 Julio Maier, Kai Ambos and Jan Woischnik (eds), *Las reformas procesales penales en América Latina*, Ad-Hoc, Konrad Adenauer Foundation and Max Planck Institut, Buenos Aires, 2001; Cesar Rodriguez, “Globalization, Judicial Reform and the Rule of Law in Latin America: The Return of Law and Development”, *Beyond Law*, Vol. 7, No. 23, 2001; P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 264–268.

46 See, for example, Sebastián Salinero Echeverría, “¿Porqué aumenta la población penal en Chile? Un estudio criminológica longitudinal”, *Revista Ius et Praxis*, Vol. 18, No. 1, 2012, pp. 113–115; M. L. Grajales and M. L. Hernandez, above note 38; Luis Pasara et al., *Independencia judicial insuficiente, prisión preventiva deformada: Los casos de Argentina, Colombia, Ecuador y Peru*, Due Process Foundation, Washington, DC, 2013.

47 P. Hathazy and M.-M. Müller, above note 7; J. Bailey and L. Dammert, above note 44; H. Frühling, above note 44.

48 For Argentina and Chile, see P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 220–246.

49 On criminal procedure, see *ibid.*, p. 146; Christian Riego, “The Chilean Criminal Procedure Reform”, *International Journal of the Sociology of Law*, Vol. 26, No. 4, 1998, p. 449 for the Chilean case. For a regional trend, see P. Hathazy, “Punitivism with a Human Face”, above note 43, p. 314. Grajales and

541 legal accountability to a secondary issue, thereby contributing to the “dark side” of
542 what has been called the “post-human rights era” in contemporary Latin America.⁵⁰
543 This can also be seen in the subordination of rehabilitation ideals and programmes
544 to more general concerns about security and order by prison administrations and
545 penal bureaucrats more broadly.⁵¹ The expansion and new power of the latter, it
546 should be recalled, often also provided new employment options for former
547 human rights activists who got incorporated into the new police and penal
548 bureaucracies. These former activists, while still officially committed to improving
549 human rights, in practice tend to deny the ongoing human rights violations
550 inside prisons, a process to which we will return to below.

551 To these factors and processes that fuelled the crisis of detention in
552 contemporary Latin America, we must add the region’s geopolitical placement
553 within the global “war on drugs”. As one leading expert summed it up:

554 The so-called “War on Drugs” waged over the last four decades has had a
555 tremendous impact on security operations and judicial and prison systems in
556 Latin America – to the point where nearly one-third of all detainees are
557 incarcerated for non-violent drug-related crimes.⁵²
558

559 In fact, mostly in response to US pressure, including the US certification process that
560 links the granting of development aid to a country’s active cooperation and
561 performance in the war on drugs, new mandatory minimum sentences for drug-
562 related crimes as well as new, and usually harsher, drug laws have been enacted
563 and implemented in many Latin American countries.⁵³ As the following quote,
564 from a report on related developments in Argentina, Bolivia, Brazil, Colombia,
565 Ecuador, Mexico, Peru, and Uruguay – the region’s main “battlegrounds” in the
566 “war on drugs” – illustrates, this has contributed substantially to the crisis of
567 detention in the region:

568 In all these countries, the emphasis placed by drug control efforts on criminal
569 sanctions has given rise to a significant increase in the number of persons
570 incarcerated for drug offenses. The enforcement of severe laws for drug
571 offenses has not only been ineffective in curbing the production, trafficking,
572 and consumption of illicit substances, but has generated enormous negative
573 consequences, including overwhelming caseloads in the courts, overcrowding
574 in the prisons, and the suffering of tens of thousands of persons behind bars
575 for small-scale drug offenses or simple possession. The weight of the drug
576

577
578 Hernandez, above note 38, and Paladines, above note 38, observe analogous subordination of human
579 rights standards to security concerns in Venezuela and Ecuador.

580 50 See, for instance, Edward L. Cleary, *Mobilizing for Human Rights in Latin America*, Kumarian Press,
581 Bloomfield, CT, 2007.

582 51 See Special Issue on “Rebirth of the Prison”, *Crime, Law and Social Change*, Vol. 65, No. 3, 2016, edited by
583 Paul Hathazy and Markus-Michael Müller.

584 52 Luciana Pol, “Failed Drug Policies in Latin America: The Impact on Prisons and Human Rights”, *Penal
585 Reform International*, 24 April 2015, available at: www.penalreform.org/blog/failed-drug-policies-in-latin-america-impact-on/.

586 53 M.-M. Müller, above note 7, p. 62.

586 laws has been felt with greater force among the most disadvantaged and
587 vulnerable sectors of society.⁵⁴

588 Contrary to the recent talk about the “failures” of the “war on drugs” and the
589 emergence of seemingly more “progressive” Latin American drug policies (including
590 legalization initiatives), this trend continues,⁵⁵ mostly because “legalization”
591 initiatives are often at odds with prevailing drug market practices – for instance,
592 decriminalizing the possession of amounts of drugs that are at odds with the
593 amounts usually sold to end-users.⁵⁶ And it also continues to be convenient to
594 incarcerate small-scale drug users for the production of statistics that demonstrate
595 governments’ commitment to, and “success” in, fighting “organized crime”.⁵⁷

596 The processes described in this section are all directly implicated in the
597 making of the crisis of detention in the region by contributing to prison
598 overpopulation, violence, informality and the deterioration of prison conditions.
599 Surprisingly enough, however, and despite recurrent episodes of prison massacres,
600 they are also at the bases not only of the normalization of everyday violations of
601 administrative, legal and humanitarian standards, but also of the denial of the
602 critical situation in the region’s prison regimes. It is the analysis of this denial to
603 which we now turn.
604

605 *The political, judicial and expert denial of prison violence and human* 606 *rights violations* 607

608 Denial, defined by Milburn and Conrad as a “psychological defense mechanism”
609 that “cancels out or obscures painful reality”,⁵⁸ is a common social and political
610 phenomenon. In fact, “our official life as nation is built on a shared denial of
611 painful realities and the suffering they engender”.⁵⁹ Taking this observation
612 seriously by considering that the denial of collective suffering in democratic
613 regimes tends to be more “subtle, putting veils over truth, establishing the public
614 agenda, adjusting reality to interests, spin-doctoring, and showing a selective
615 concern over policies”,⁶⁰ allows for a better and more comprehensive
616 understanding of the current crisis of detention in Latin America. In fact, this
617 crisis, we argue, is the direct result of a *politics of denial*.⁶¹ This politically
618

620 54 Pien Metaal and Coletta Youngers, *Systems Overload: Drug Laws and Prisons in Latin America*,
621 Transnational Institute and Washington Office on Latin America, Washington, DC, 2011, p. 5,
622 available at: www.tni.org/files/tni-systems_overload-def.pdf.

623 55 Alejandra Corda, *Drug Policy Reform in Latin America: Discourse and Reality*, Colectivo de Estudios
624 Drogas y Derecho, 2015.

625 56 See, for instance, Julieta Lemaitre and Mauricio Albarracín “Patrullando la dosis personal: La represión
626 cotidiana y los debates de las políticas públicas sobre el consumo de drogas ilícitas en Colombia”, in
627 Alejandro Gaviria Uribe and Daniel Mejía Londoño (eds), *Políticas antidroga en Colombia: Éxitos,*
628 *fracasos, extravíos*, Bogota, Universidad de los Andes, 2011.

629 57 M.-M. Müller, above note 30, p. 232.

630 58 Michael A. Milburn and Sheree D. Conrad, *The Politics of Denial*, MIT Press, Boston, MA, 1996, p. 2.

59 *Ibid.*, p. 4.

60 S. Cohen, above note 28, p. 30.

61 *Ibid.*

631 produced denial is rooted in (a) the new political terrain and interests built around
632 prison expansion, (b) internal changes in the relationship between institutions and
633 bureaucracies operating in the carceral field of the region's penal States, and (c) the
634 emergence and rise to power of new experts and expertise in the field of prison
635 policies.

636 Regarding agents primarily involved in *the political arena*, the politicization
637 of crime control in Latin America, the widespread consensus regarding the so-called
638 "benefits" of "tough on crime" policies, and the related centrality of punitive stances
639 for promoting political careers in the region's "violent democracies"⁶² have pushed
640 political actors to show a very selective concern, to use Cohen's words, with the
641 outrageous prison conditions in their countries, as evinced in the cases discussed
642 below. This is mostly because the recognition of the grim underside of the very
643 punitive measures being promoted and implemented by these political actors
644 would devalue the political capital they have accumulated by being "tough on
645 crime".⁶³ In other words, such recognition would undermine the efforts of
646 politicians, presidents, governors, mayors and/or high-profile legislators to "make
647 crime pay"⁶⁴ by implementing punitive policies and/or institutional reforms that
648 ultimately fuel the rise of the region's prison (over)population. At the discursive
649 level, any call for the implementation of policies that would improve prison
650 conditions or prisoners' rights contradicts the highly emotional and exclusionary
651 punitive discourse that essentializes criminals as the dangerous "other", often
652 derived from and fuelled by simplifying stereotypical tropes circulated by the
653 press and politicians. Thus, there is a tendency to deny prison problems by
654 systematically investing – in material, symbolic and discursive terms – in the
655 punitive measures discussed above; measures that ultimately worsen prison
656 conditions. In a context in which the "political agenda" of Latin America's
657 "securitized democracies" is dominated by an over-concern with (in)security
658 issues, it is not a big surprise that for political actors and the media, inmates only
659 deserve mentioning and attention when spectacular riots – accompanied by
660 escapes and/or massacres – happen. Such "spectacular" instances then create
661 opportunities for blaming political opponents and increasing daily newspaper
662 sales.⁶⁵ It is during such episodes that the routine denial of prison conditions is
663 temporarily replaced by what Cohen refers to as an "implicatory denial" –

664
665 62 E. D. Arias and D. M. Goldstein, above note 39.

666 63 P. Chevigny, above note 32; Máximo Sozzo, "Populismo punitivo, proyecto normalizador y 'prisión-
667 depósito' en Argentina", *Sistema Penal y Violencia*, Vol. 1, No. 1, 2010; Lucía Nuñovero Cisneros, "Las
668 razones y los sentimientos del encierro: consideraciones político económicas del aumento de las
669 poblaciones penitenciarias en el Perú", in Chloe Constant (ed.), *Pensar las cárceles de América Latina*,
670 Instituto de Estudios Andinos, Lima, 2016.

671 64 Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics*, Oxford
672 University Press, Oxford, 1997.

673 65 German Rey (ed.), *Los relatos periodísticos del crimen: Como se cuenta el delito en la prensa escrita
674 latinoamericana*, Fundación Friedrich Ebert, Bogotá, 2007. See also Jenny Pontón Cevallos, "The Crime
675 Section in Ecuadorian Media: A Problem of Citizen Security?", *Revista Urvio*, No. 5, September 2008;
676 Jenny Pontón Cevallos, "Prensa y situación carcelaria en el país", *Boletín Ciudad Segura: FLACSO sede
677 Ecuador*, No. 1, January 2006, p. 12, available at: [http://repositorio.flacsoandes.edu.ec/bitstream/10469/
2355/1/BFLACSO-CS1.pdf](http://repositorio.flacsoandes.edu.ec/bitstream/10469/2355/1/BFLACSO-CS1.pdf).

denying the “moral, political or psychological implications” of certain facts,⁶⁶ either by stressing the “necessity” of avoiding escapes or liberating hostages, by dehumanizing inmates (“What can you expect from prisoners?”), or, in very few cases, by recognizing the lack of political and administrative control in and over prisons. In many cases, routine atrocities are followed by State atrocities during the “recovery” of the prison from the rioting gangs.⁶⁷

Changes inside *the penal State*⁶⁸ – that is, the elite position of the penal bureaucracies involved in the creation and execution of policies related to detention, sanctioning and punishment – have also contributed to the denial of prison violence and human rights violations. A study of judicial responses to prison problems in Latin America⁶⁹ distinguished three types of bureaucratic reactions in this regard: (a) a dominant tendency to “not intervene”; (b) interventions meant to highlight structural prison deficiencies that seemingly aim at improving prison conditions within a certain timeframe but ultimately assume that the main problem is a matter of overcrowding, thereby calling “for the building of more and better prisons”, often under the banner of “modernization” and “humanitarian” prison-building; and (c) the rather uncommon option of reducing the use of custodial sanctions. In a typical case of “interpretive denial” through “legalism”, most cases of non-intervention by the judiciary point to the lack of authority over the executive branch or prison authorities’ jurisdiction. It is also a common practice by the judiciaries to deny their responsibility for seemingly “structural agentless outcomes”, for instance by pointing to the fact that the prison crisis “is endemic” and its solution, therefore, will have to be postponed to an undefined future: “From the judicial point of view, overcrowding dominates the imagination of courts. From the judicial point of view it is believed that its disappearance will imply the perfect functioning of the penitentiary apparatus.”⁷⁰

This trend of legalist and normalizing responses has continued, and has even been reinforced by structural changes in the position of courts within the region’s carceral fields.⁷¹ Even if the relative power of Latin American judiciaries has increased vis-à-vis prison administrations, when considering the consequences of recent criminal procedure reforms, the new role of judiciaries as wardens of prisoners’ rights has substantially been curtailed by counter-developments. In inquisitorial criminal justice systems, the judiciary continued to impose highly

66 S. Cohen, above note 28, p. 27.

67 These dynamics were already observed by Teresa Caldeira in the late 1990s in her study of the Carandirú prison massacre in Sao Paulo, Brazil, where all these implicatory denials of prison violence and of the atrocities committed in the recovery of the prisons were present. See Teresa P. R. Caldeira, “The Massacre at the Casa de Detencao”, in *City of Walls: Crime, Segregation and Citizenship in Sao Paulo*, University of California Press, Berkeley, CA 2000, pp. 175–182.

68 David Garland, “Penalty and the Penal State”, *Criminology*, Vol. 51, No. 3, 2013.

69 Manuel Iturralde Sanchez and Libardo Ariza, “Reformando el infierno: Los tribunales y la transformación del campo penitenciario en América Latina”, in Libardo José Ariza and Manuel Iturralde (eds), *Los muros de la infamia: Prisiones en Colombia y en América Latina*, CIJUS, Universidad de los Andes, Bogotá, 2011.

70 *Ibid.*, p. 21.

71 P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 244–245, 258–259; P. Hathazy, above note 17.

punitive measures⁷² as mandated by increasingly “toughened” penal law, and in line with a growing politicization of judicial positions.⁷³ In the adversarial criminal justice systems (i.e., those of Chile, Brazil, Mexico, Venezuela, Colombia and Argentina), the judges themselves lost power vis-à-vis prosecutors⁷⁴ and oversight special courts that received only very limited resources, thereby relegating these institutions to a predominantly symbolic invention.⁷⁵

Finally, changes in *the academic and expert sectors* during the last two decades have led to the proliferation of euphemistic discourses that justify prison expansion while leaving aside issues of prison violence and prisoners’ (human) rights. Although during the first phases of the transitions to democracy or regime transitions, such as in Mexico or Venezuela, local human rights activists paid close attention to prison problems,⁷⁶ over time their focus shifted towards – or, more accurately, followed – those problems privileged by politicians: questions of (in)security and police reform. As we will show below, in the case studies we analyze, for many activists, their prior investments in judicial and police reform projects reduced incentives to recognize the deterioration of prison conditions, as the latter were partly the unintended outcomes of their own work on police and judicial reform that contributed to an expansion in the size and powers of these institution⁷⁷ – a development that also fuelled their growing punitiveness. The main exception to this trend is a minority of “displaced” human rights activists who initially worked on police and criminal-court reforms but later started to pay attention to worsening prison conditions, as we will discuss below. Unfortunately, those interested in prison matters face severe problems and political obstacles in the politicized climate outlined above, and it is therefore no surprise that the most common avenue for presenting their claims has been the deployment of “internationalization strategies” (see below) – for instance, by presenting cases to the Inter-American Commission on Human Rights (IACHR). This strategy has produced the most surprising cases of government and bureaucratic denial, as we will analyze below.

To these factors we must add *the contribution of prison informality* discussed above. The informality that exists inside Latin American prisons often

72 For the Argentine cases, see P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 272–273.

73 On the politicization of judicial positions and punitive stances, see Luis Pasara, “Prisión preventiva e independencia judicial en Colombia, Ecuador y Perú”, in *La justicia en la región andina*, Fondo Editorial, PUC-Peru, Lima, 2015, pp. 443–467.

74 Luis Pásara, “El ministerio público en la reforma procesal penal de Chile” and “Acerca de la reforma procesal penal en Chile, Ecuador y Perú”, in *La justicia en la región andina*, Fondo Editorial, PUC-Peru, Lima, 2015, pp. 115–152; Julita Lemgruber *et al.*, *Ministerio Público: Guardiáo da democracia brasileira?*, Centro de Estudos de Seguranca e Cidadania, Rio de Janeiro, 2016.

75 P. Hathazy, “Democratizing Leviathan”, above note 43, p. 200; Jörg Alfred Stippel, “Acceso a la justicia en materia penitenciaria: ‘Una deuda pendiente y un desafío para el futuro’”, available at: www.oas.org/dsp/documentos/ministerial/pres%20Stippel%20esp-CE00379S04.pdf; Cesar Barros Leal, *La ejecución penal en América Latina a la luz de los derechos humanos*, Porrúa, ILANUD and UNAM, 2009.

76 Andres Dominguez Vial (ed.), *El sol en la ciudad: Estudios de prevención del delito y modernización penitenciaria*, Editora Nacional de Derechos Humanos, Santiago de Chile, 1993.

77 For the Argentine and Chilean cases, see P. Hathazy, “Democratizing Leviathan”, above note 43, pp. 275–276, 258–260; P. Hathazy “Punitivism with a Human Face”, above note 43.

766 leads prison authorities to deny and maintain secret everyday prison realities from
 767 which they benefit in political and often economic terms, including their complicity
 768 in facilitating riots or leaking information in order to produce public scandals that
 769 will limit the attempts of well-intentioned up-and-coming politicians to change
 770 prison regimes.⁷⁸ For high-ranking political agents, ministries or secretaries of
 771 justice, strategies of “not wanting to know” and delegating responsibilities to the
 772 “corrupt” low-ranking bureaucrats and prison staff become more and more
 773 common. The latter thereby serve as convenient scapegoats for prison problems
 774 while allowing for the preservation of political careers.⁷⁹ On the other hand,
 775 politicians are increasingly interested in reducing political scandals by informally
 776 granting prison officials more power in exchange for guarantees of peace and
 777 tranquillity inside their institutions, by whatever means necessary – including the
 778 delegation of power to prison gangs.⁸⁰ This further increases the denial of
 779 violence, corruption and informal self-government.

780 Finally, a *geographic dimension* contributing to the denial of the crisis of
 781 detention in Latin America must also be mentioned here. The massive prison
 782 construction boom, mostly following US prison complex architectures – including
 783 maximum-security units – coincides with the relocation of prison facilities away
 784 from urban areas.⁸¹ Prisons, and prison conditions, are literally disappearing
 785 from the sight of most (politically sensitive) citizens. Rising urban land and real-
 786 estate prices – a favourite investment site for the profits of the re-primarized
 787 export economies – contribute to the spatial peripherization of prisons and
 788 prisoners, as political and economic elites prefer to reserve precious urban lands
 789 for economic development projects and not the construction of desperately
 790 needed new prisons. In many cases, this has also led to the closing and selling of
 791 older prisons located in downtown areas, which had to make space for new urban
 792 development projects such as shopping malls, becoming monuments of
 793 consumption.⁸² Old prison farms located in the countryside and used as semi-
 794 open prisons housing soon-to-be-released prisoners then provide for the needed
 795 spaces on which to construct the new prison complexes, to which the
 796
 797
 798

799 78 On the informality of prisons in Latin America, see Christopher Birkbeck, “Imprisonment and
 800 Internment: Comparing Penal Institutions North and South”, *Punishment and Society*, Vol. 13, No. 3,
 2011. On the everyday markets of goods and information in prisons, see, for example, Francesca

801 Cerbini, “El espacio carcelario y la organización interna de los reclusos de San Pedro (La Paz, Bolivia):
 802 Repensando el concepto de vigilar y castigar”, and Andres Antillano, “La prisión en dos tiempos: La
 803 cárcel venezolana entre el neoliberalismo y la revolución bolivariana”, in C. Constant (ed.), above note 63.

804 79 On the professionalizing tendencies of political agents in the new Latin American democracies, see
 M. Cavarozzi, above note 34, p. 56.

805 80 For Brazil, see Fernando Salla, “As rebeliões nas prisões: Novos significados a partir da experiência
 806 Brasileira”, in *Sociologias*, Vol. 8, No. 16, 2006. For Chile and Argentina, see P. Hathazy, “Democratizing
 Leviathan”, above note 43, p. 225. For Venezuela, see A. Antillano, above note 78.

807 81 A prime example is the process of relocation observed in the Brazilian state of Sao Paulo, the biggest prison
 808 system in Latin America, as documented in Giane Silvestre, “O processo de interiorizacao penitenciaria em
 809 Sao Paulo”, in *Dias de visita: Uma sociologia da punicao e das prisoes*, Alameda, Sao Paulo, 2012, pp. 121–130.

810 82 See Susana Draper, *Afterlives of Confinement: Spatial Transitions in Postdictatorship Latin America*,
 Pittsburgh University Press, Pittsburgh, PA, 2012.

811 criminalized dwellers of the urban periphery are now sent – further increasing
812 invisibilization of the prison crisis through the spatial displacement of its victims.

813 In a regional and national context defined by politically induced denial and
814 invisibility, institutional weakening of protective organs, empowered prison
815 bureaucrats, and new generations of criminal justice reformers interested in
816 perfecting the “toughened” policing and judicial branches, human rights activists
817 have invested in new avenues to advance prison change and prisoners’ protection.
818 The most common strategy, not surprisingly, has been the internationalization of
819 their fight, resorting to international organs, and introducing the language of
820 humanitarian law into prison policy vocabularies, as a site of last resort. We now
821 turn to the analysis of two cases where these structurally based politics of denial
822 and humanitarian and human rights international strategies have clashed in the
823 attempt to put a limit on the carceral social genocide taking place in Latin America.
824

825 **National politics and international strategy convergence as** 826 **(possible) sources of change** 827

828
829 In this last section we briefly analyze the growing centrality of “international
830 strategies” – considered to be “the ways that national actors seek to use foreign
831 capital, such as resources, degrees, contacts, legitimacy and expertises[,] ... to
832 build their power at home”⁸³ – by human rights activists and how they interact
833 with tensions inscribed in the system of agents involved in punitive prison policy-
834 making and the implementation of penal laws at the national level. We draw
835 insights from two national cases, Chile and Mexico, that present similar
836 mechanisms of denial but differ in the way in which international human rights
837 activism has been able to alter the accepted political and expert thinking. The
838 analysis shows that international human rights strategies are effective when they
839 converge with the dynamics of and changes in the distributions of power in the
840 national carceral arenas. Such dynamics of and changes in distribution of power,
841 while being beyond the control of activists, nonetheless must be mapped and
842 taken into account for any successful attempt at change.

843 In Chile, the politicization of prison policies – that is, the displacement of
844 human rights experts by reform technocrats interested in efficiency, security and
845 penal State expansion⁸⁴ – led to the current prison crisis and its denial in the face
846 of internal and external demands. However, breaking the logic of denial and the
847 incipient introduction of alternative policies was possible, as human rights
848 activists’ strategies, with their different temporalities (from press releases
849 responding to scandals, to periodic report-making, to extraordinary long-term
850

851 83 Yves Dezalay and Bryant G. Garth, *The Internationalization of Palace Wars: Lawyers, Economists and the*
852 *Contest to Transform Latin American States*, University of Chicago Press, Chicago, IL, 2002, p. 7. See also
853 Markus-Michael Müller, “De-Monopolizing the Bureaucratic Field: Internationalization Strategies and the
854 Transnationalization of Security Governance in Mexico City”, *Alternatives: Global, Local, Political*, Vol.
39, No. 1, 2014.

855 84 P. Hathazy, “Democratizing Leviathan”, above note 43, p. 224.

intervention via institution-building and resort to international bodies), converged with the actions of other experts and received the backing of temporarily marginalized political elites within the highly consensual party system and its technocratic style of policy-making.

Chilean prisons have been at the centre of the international human rights movement's attention in the 1970s and 1980s as part of the fight against authoritarian regimes and political imprisonment.⁸⁵ During the 1990s, authorities and experts expected that criminal procedure reforms would solve the overpopulation problem through faster trials and fewer pre-trial detainees,⁸⁶ with human rights expertise marginalized from prison policy-making circles. As the prison population grew by 50% between 1994 and 2000, from 20,954 to 33,051, and criminal accusations before courts ballooned from 21,966 in 1997 to 31,573 in 2000 after the new criminal procedure was passed,⁸⁷ the promised solutions soon proved to be false. A "prison crisis" exploded in December 2000 when 11,000 inmates out of the total prison population of 31,000 staged a nationwide protest after the death of seven inmates in a prison fire. Authorities responded with a programme of prison-building and privatization.⁸⁸ The crisis and the demands of the "grand reform" of the criminal justice system allowed private businesses to acquire a share in the business of punishment and high officers and State managers to replace correctionalist expertise with managerial skills.⁸⁹ The crisis also turned the Chilean prisons into a human rights battleground again.

In the late 1990s, human rights scholars once again aimed their human rights guns at the prisons. The strategies were threefold: informational, judicial and institutional. In 2000, professors at Diego Portales Law School began producing annual reports on human rights abuses under democracy, targeting prisons.⁹⁰ The Human Rights Center at Portales agglutinated other human rights groups: the older Corporation for the Defence of People's Rights (Corporación para la Defensa de los Derechos del Pueblo, CODEPU), created in 1980 and

85 The human rights reports of the 1970s gave renown to human rights organizations documenting the aberrant human rights violations during dictatorship. See Yves Dezalay and Bryant G. Garth, "From the Cold War to Kosovo: The Rise and Renewal of the Field of International Human Rights", *Annual Review of Law and Social Science*, Vol. 2, No. 1, 2006.

86 Cristian Riego, "La prisión durante el proceso penal en Chile", *Cuadernos de Análisis Jurídico*, No. 16, 1990; P. Hathazy, "Democratizing Leviathan", above note 43, p. 223.

87 See Jörg Alfred Stippel, *Las cárceles y la búsqueda de una política criminal para Chile*, LOM, Santiago de Chile, 2006, p. 34; S. Salinero Echeverría, above note 46, p. 115.

88 Three weeks after the first massive protest in prisons in Chile, the justice and public works ministers announced a programme to build prisons for 16,000 inmates, putting them in the hands of private companies: *El Mercurio*, 14 January 2001.

89 The government privatized prisons "the French way", retaining security and supervision of prisons and contracting out building and operations, as well as provision of food, laundry, medical and rehabilitation "services": *El Mercurio*, 14 January 2001. For an analysis of the privatization process, see P. Hathazy, "Democratizing Leviathan", above note 43, pp. 226–229.

90 Their 2002 report showed overcrowding, lack of hygiene, insufficient food, prisons controlled by inmates with high levels of violence, deaths, and a highly tense order produced by the collaboration between abusive and exploitative gangs and despotic guards. The report also denounced systematic torture and physical abuses. See Alvaro Castro and Martín Besio Hernández, "Chile: Las cárceles de la miseria", *Pena y Estado: Revista Latinoamericana de Política Criminal*, Vol. 6, No. 6, 2005.

tasked with the defence of prisoners,⁹¹ and the new Contrafraternity of Common Prisoners (Confraternidad de Familiares y Amigos de Presos Comunes, CONFRAPECO), an organization of ex-convicts mobilizing under the banner of human rights.⁹² For five years, between 2002 and 2007, the Chilean Ministry of Justice systematically denied the validity of the reports describing the terrible prison conditions.⁹³ Following a managerial approach, top-down prison bureaucracies tried to symbolically solve the problems of violence, killings and overcrowding, treating them as issues of public relations and public image. At the same time, they hired teams of local and foreign legal experts to show they were working on the problem. The Ministry of Justice hired its own human rights specialists and socio-legal scholars from Germany with the assistance of the (now-defunct) German Development Agency (Deutsche Gesellschaft für Technische Zusammenarbeit)⁹⁴ – with the explicit aim of assisting the Ministry in regulating judicial oversight of prisons.⁹⁵ After two years of work, and after receiving the collaboration of legal scholars from the Universidad Diego Portales and Universidad de Chile, the minister of justice decided to abandon the project in 2007 and replace it with a smaller plan to create supervising judge positions that have so far not been created.

Finding no response in the national arenas, in the mid-2000s human right activists at Diego Portales Law School deployed internationalization strategies similar to those used during dictatorship⁹⁶ and turned to the IACHR. They prompted a visit to Chile that reported on the overcrowding, State violence, officer abuses, inadequate facilities and lack of rehabilitation services found in the country's prisons.⁹⁷ The IACHR has been progressively interested in common prison conditions in the region since 1993.⁹⁸ The 2008 visit, along with internal political pressure, forced the Prison Service Directorate to recognize that prison conditions were substandard and that they violated human rights.

In the face of these negative reports and scandals, the central government finally decided in 2009 to call a special commission to study problems and propose solutions. Named the Council for a New Penitentiary Policy, it was a place where

91 CODEPU, “¿Quiénes somos?”, available at: www.codepu.cl/pagina-ejemplo/.

92 CONFRAPECO, “Confraternidad de Familiares y Amigos de Presos Comunes – CONFAPRECO”, *Idealist.org*, available at: www.idealist.org/es/ong/5f3558ab54bd4125b4ddd95146bfd6a-confraternidad-de-familiares-y-amigos-de-presos-comunes-confapreco-santiago-de-chile.

93 Centro de Derechos Humanos, *Informe anual sobre derechos humanos en Chile 2009*, Universidad Diego Portales, Santiago de Chile, 2010, p. 96.

94 This was a private institution owned by the Federal Republic of Germany that under the banner of technical assistance (*technische Zusammenarbeit*) provided development aid to countries in the global South between 1975 and 2011.

95 See, for instance, Johannes Feest, “Hacia un sistema de control de la ejecución de penas no privativas de libertad”, *Boletín Jurídico del Ministerio de Justicia*, Vol. 4, No. 2, 2003.

96 See above note 80.

97 Rapporteur on the Rights of Persons Deprived of Liberty “Rapporteurship on the Rights of Persons Deprived of Liberty Concludes Visit to Chile”, Press Release No. 39/08, 2008, available at: www.cidh.oas.org/Comunicados/English/2008/39.08eng.htm.

98 In 1994 the IACHR declared that steps must be made “to remedy inhuman conditions in prisons”, and it began dealing with them in its annual report of 1995. It issued a recommendation in 1998, has produced country studies since 1998, and created a special rapporteurship on the rights of persons deprived of liberty in its 119th session, in March 2004. See: www.oas.org/en/iachr/pdl/default.asp.

many police and justice reformers who were displaced from centre stage when reforms were put in place could make a comeback.⁹⁹ In early 2010, the Council delivered a report which focused on overcrowding, security and custody, insufficient infrastructure, lack of “adequate offer of rehabilitation”, lack of integration between the closed and open system, and lack of judicial control.¹⁰⁰ Elected right-wing president Sebastián Piñera initially ignored the report, as the “managers” in the prison administration worked hard to deny, cover and minimize the brutal conditions of Chile’s prisons.¹⁰¹ On 8 December 2010, a riot exploded in the San Miguel Penitentiary Complex, a complex designed to house 1,100 that was housing 1,964 at the time, controlled by only thirty guards. Eighty-one inmates died in a fire ignited amidst the fighting.¹⁰² Only after the greatest prison catastrophe in Chilean history had put the prison system crisis in the world tabloids, and Concertación parties, now in opposition, had voiced the criticisms of the displaced experts and human rights activists, did the government begin to implement some of the IACHR and Council recommendations.¹⁰³ Since 2011, the government has backed reforms to reduce the prison population through alternative sanctions for small crimes and fines (excluding drug offences nonetheless), introduced a pardons policy for non-violent offences (Law 20.588 of General Pardon)¹⁰⁴ and put conditional release decisions in the hands of a special commission headed by judicial authorities instead of political delegates (Law 20.587).¹⁰⁵ Prison authorities have also created a Human Rights Unit in charge of monitoring human rights standards. These measures have served to stop the growth in imprisonment rates but high levels of overpopulation remain, as well as serious deficiencies regarding facilities, training and the physical security of inmates.¹⁰⁶

The Chilean case is quite unusual in that the human rights activists contributed to new policies and some changes regarding the quantity and quality of imprisonment. This depended on a very specific social configuration that weakened the logic of denial and permitted alternative policies to be advanced.

99 The Council was formed entirely of “specialists” from think-tanks and NGOs: the Fundación Paz Ciudadana, Center for the Study of Security, led by Hugo Frühling; the FLACSO Security and Citizenship Program, directed by Lucía Dammert; and Cristian Riego from the Justice Studies Center of the Americas. The think-tanks and university expert were joined by the Supreme Court prosecutor, and representatives of the Ministries of Justice and the Interior. The minister of justice asked them to work on rehabilitation. See Consejo para la Reforma Penitenciaria, *Recomendaciones para una nueva política penitenciaria*, Ministerio de Justicia de Chile, Santiago de Chile, 2010.

100 *Ibid.*

101 Centro de Derechos Humanos, “Sistema penitenciario y derechos humanos”, in *Informe anual sobre derechos humanos en Chile 2009*, Universidad Diego Portales, Santiago de Chile, 2010, p. 109.

102 Centro de Derechos Humanos, “Sistema penitenciario y derechos humanos”, in *Informe anual sobre derechos humanos en Chile 2011*, Universidad Diego Portales, Santiago de Chile, 2011, pp. 111–113, section “Incendio de la Carcel San Miguel”.

103 *Ibid.*, pp. 113–118, section “Reformas y avances desde 2010 a la fecha”.

104 Law 20.588, “Indulto general”, 22 May 2012, available at: www.leychile.cl/Navegar?idNorma=1040511.

105 Law 20.587, “Modifica el régimen de libertad condicional y establece en caso de multa la pena alternativa de trabajos comunitarios”, 8 July 2012, available at: www.leychile.cl/Navegar?idNorma=1040829.

106 Centro de Derechos Humanos, *Informe anual sobre derechos humanos en Chile 2014*, Universidad Diego Portales, Santiago de Chile, 2014, p. 286.

This was possible (a) because agents in the periphery of the carceral policy arena could launch effective strategies (i.e., human rights activists engaging supranational organs in convergence with marginalized experts trying to make a comeback); (b) when the responsible incumbent political authorities and allied experts saw their positions jeopardized because of international scrutiny (as in the visits and report of 2008 and 2010); and (c) when experts lost power and direct access to the government, as in 2010, when the left-centre Concertación alliance of parties lost the presidency to the right-wing opposition.

That these conditions are important when considering the feasibility of internationalization strategies for confronting the political denial of the domestic crisis of detention becomes apparent when contrasting the Chilean case with related developments in Mexico. Mexico, as shown elsewhere in greater detail, clearly joined the punitive turn in contemporary Latin America, including the related “crisis of detention”.¹⁰⁷ When comparing the Mexican developments with the Chilean case, however, three structural aspects that contributed to the lack of success in addressing this crisis by activists “going international” need to be taken into account: (a) the relative weakness of Mexican civil society organizations, including human rights groups; (b) the particularity of the Mexican security situation, in particular regarding the severity of the “war on drugs” that, since 2006, has consumed the lives of more than 100,000 people;¹⁰⁸ and (c) the inherited informal institutional legacy of the authoritarian one-party regime of the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI) that ruled Mexico from 1929 to 2000 and, after a short interlude, again since 2012.¹⁰⁹

The year 2000 signalled the breakthrough of the subnational democratization process that had been on the way since the mid-1990s at the national level. However, when looking at prison statistics, full-fledged regime transition also coincided with a hitherto unparalleled increase in Mexico’s inmate population, rising from 154,765 prisoners in 2000 to 247,888 in 2015.¹¹⁰ This contributed to serious overcrowding problems in the country, leading to a worsening of the already highly problematic prison conditions in authoritarian Mexico,¹¹¹ as evidenced by a comprehensive assessment of the Mexican prison system by the National Human Rights Commission (Comisión Nacional de Derechos Humanos, CNDH) in a 2014 report.¹¹²

When considering that such reports clearly evidencing serious deficiencies inside the country’s prisons are regularly issued by public institutions, it seems at

107 M.-M. Müller, above notes 30 and 36; Markus-Michael Müller, “Penal Statecraft in the Latin American City: Assessing Mexico City’s Punitive Urban Democracy”, *Social and Legal Studies*, Vol. 22, No. 4, 2013.

108 Kimberly Heinle, Octavio Rodríguez Ferreira and David A. Shirk, *Drug Violence in Mexico: Data and Analysis through 2015*, Justice in Mexico Project, University of San Diego, San Diego, CA, 2016, available at: <https://justiceinmexico.org/wp-content/uploads/2016/04/DrugViolenceinMexico-Final-2015.pdf>.

109 See Jay Longston, *Democratization and Authoritarian Party Survival: Mexico’s PRI*, Oxford University Press, Oxford, 2017.

110 Presidencia de la República, *4to. Informe de Gobierno: 2015–2016. Anexo estadístico*, Gobierno de los Estados Unidos Mexicanos, Mexico City, 2016, p. 53.

111 On the latter, see Americas Watch, *Prison Conditions in Mexico*, Human Rights Watch, New York, 1991.

112 CNDH, *Diagnóstico nacional de supervisión penitenciaria 2014*, CNDH, Mexico City, 2014.

1036 first sight that the Mexican authorities are trying to confront the crisis of detention.
 1037 On closer inspection, however, this is not the case. To understand this outcome, it is
 1038 important to place Mexico's crisis of detention within the context of the country's
 1039 escalating drug war and a general, real as well as perceived deterioration of its
 1040 security situation that coincided with the last phase of the democratization
 1041 process and Mexico's embrace of neoliberalism since the mid-1990s. In turn, this,
 1042 as elsewhere in Latin America, politicized the issues of crime and insecurity.
 1043 This led Mexican politicians and bureaucrats to call for more, better and tougher
 1044 law enforcement and harsher punishment for criminals.¹¹³ And it translated into
 1045 efforts by politicians and law enforcement agencies to demonstrate their success in
 1046 crime fighting by engaging in "statistical politics" that show that the government
 1047 is winning its war against crime by arresting more and more "criminals". The
 1048 latter, as elsewhere in the region, usually come from the most marginalized
 1049 segments of the population and are hardly the worst or most dangerous criminals.¹¹⁴

1050 Human rights activists interested in changing this situation are confronted
 1051 by two main obstacles. First of all, as security is a main priority for Mexican citizens
 1052 and politicians, and as the proliferation of "citizen security" discourses has divided
 1053 up the Mexican political space into rights-deserving citizens and criminal "non-
 1054 citizens", the latter have almost no lobby as it has become increasingly difficult to
 1055 openly call for the protection and improvement of the rights of criminal and
 1056 criminalized "non-citizens". As one interview partner working for an NGO that
 1057 seeks to address these problems put it, "[f]or many Mexicans, perpetrators
 1058 deserve no human rights" – a fact which translates into serious funding problems
 1059 for civil society actors interested in improving Mexican prison conditions.¹¹⁵

1060 Here it should be mentioned that Mexican civil society is rather weak when
 1061 compared to other Latin American countries. This weakness stems from the often
 1062 successful co-optation efforts of dissident groups by the PRI and the ways in
 1063 which these have translated into a form of "State-financed" semi-official civic
 1064 activism. This has had negative consequences for the credibility of many civic
 1065 organizations in the country, preventing them from becoming deeply embedded
 1066 in Mexican society.¹¹⁶ As one NGO member summed it up:

1067 NGOs have historically served to enrich those people who direct them and they
 1068 aren't accountable [*han servido para enriquecer a las personas, que las dirigen y*
 1069 *no rinden cuenta*]. Therefore people don't give [them] money, which
 1070 substantially limits the amount of money you, as an organization, can expect
 1071 [to receive] from the people.¹¹⁷

1072
 1073 This general problem is more severe for those groups struggling for prisoners'
 1074 rights, and their struggle is made even more complicated and difficult by the
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1076 113 Arturo Alvarado Mendoza, "La criminalidad y las políticas de seguridad en México", *Cuestiones de*
 1077 *Sociología*, No. 10, 2014.

1078 114 M.-M. Müller, above note 30, p. 233.

1079 115 Personal interview with NGO member, Mexico City, April 2008.

1080 116 M.-M. Müller, above note 36, pp. 101–102.

117 Personal interview with NGO member, Mexico City, June 2006.

1081 lasting legacy of those informal and co-optation-centred practices, including
1082 clientelism, in Mexico's contemporary political system.¹¹⁸ In addition to this,
1083 another problem consists of the prevailing informality inside the Mexican
1084 political system that extends into the penal field and that undermines the success
1085 of internationalization strategies, just as we have observed in the case of Chile. In
1086 fact, Mexican activists, largely due to their domestic "weakness", have tried to go
1087 international, but due to high levels of domestic informality, these efforts have
1088 run dry. In the words of another NGO member:

1089 What is true is that the state listens to you, but it does not comply. In Mexico
1090 there is no legal system which would apply international [human rights]
1091 recommendations or decisions to the national level. This means that it [the
1092 international human rights system] only serves as a medium for political
1093 pressure. Unfortunately in our legal environment, there exists no possibility
1094 of applying international criteria to concrete legal cases. Despite the fact that
1095 our constitution gives international treaties the status of supreme laws, there
1096 are no institutional juridical mechanisms which permit the direct application
1097 of a decision [of an international human rights body]. There is no respective
1098 legal system or the judge is not obliged to apply these recommendations. And
1099 on the other hand, although international human right treaties have the
1100 character of supreme laws, it is certain that the judges, that all the
1101 jurisdictional personnel neither has the capacity to adopt them, nor knows
1102 something about these treaties. ... Because in order to punish a governor or a
1103 police chief of whom we know that he gave the orders, you need a political
1104 judgement [*juicio político*] from the legislative power of the respective state
1105 or from the federal level. But, for sure, this guy has his godfathers
1106 [*compadres*] among the deputies, and they won't prosecute him. So, there is
1107 no way, definitely no way to sanction neither high ranking police officers,
1108 nor the responsible politicians.¹¹⁹

1109 This observation extends to the realm of penal improvements, implying that because
1110 of the prevailing informality that determines the workings of power in the Mexican
1111 penal field, international human rights institutions and mechanisms lose their
1112 power when they travel back to Mexico. The fact that dominant human rights
1113 experts and agenda setters in Mexico's penal field often don't come from an
1114 activist background but are rather technocratic academics whose work ethos is
1115 dominated by ideals of impartiality, efficiency and neutrality – and who often
1116 follow the dominant political agendas and/or priorities of external funding bodies
1117 which, in light of Mexico's security crisis, often tend to ignore the crisis of
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1122 118 On the difficulties of access to government by civil society actors, see Sharon F. Lean, "Enhancing
1123 Accountability in Mexico: Civil Society in a New Relationship with the State?", *LASA Forum*, Vol. 45,
1124 No. 1, 2014, available at: <https://lasa.international.pitt.edu/forum/files/vol45-issue1/Debates3.pdf>.

1125 119 Personal interview, NGO member, Mexico City, July 2007, quoted in Markus-Michael Müller, "The
Struggle over Human Rights in Mexico", in Klaus Hoffmann-Holland (ed.), *Ethics and Human Rights
in a Globalized World*, Mohr Siebeck, Tübingen, 2009.

1126 detention in the country¹²⁰ – represents another structural problem for anyone
1127 interested in improving Mexican prison conditions. The apparent “neutrality” of
1128 many human rights experts, the prevailing informality of Mexican politics and
1129 the “opportunity structure” provided by Mexico’s “drug war” for the political
1130 denial of the country’s prison crisis are factors that have ultimately undermined
1131 the more positive outcomes of activists “going international”.

1132 In that respect, just as some political, judicial, administrative or expert
1133 agents may resist, abort or ignore struggles for new policies, as in the case of
1134 Mexico, it is only through alliances and the backing of these different agents
1135 located in the national carceral fields that improvements in domestic prison
1136 conditions will happen. The human rights principles, actions and desires of
1137 activists have to be matched with acute sensitivity and precise knowledge of the
1138 structure of interests and strategies of agents involved in the domestic definition
1139 of prison policies and priorities. The work of social scientists working in and on
1140 the region’s prisons becomes not only important for documenting the power and
1141 symbolic structures leading to the current prison crisis and the underlying
1142 sources of its denial, but also decisive in identifying the multiple options available
1143 to overcome resistance and produce positive changes.

1144 In 1999, Special UN Rapporteur Nigel Rodley saw in the “decision of the
1145 Inter-American Commission on Human Rights to study prisons” the “one bright
1146 spot” in the region.¹²¹ Since then the IACHR has produced numerous country,
1147 regional and special topic reports. In 2011 the IACHR concluded its special
1148 report on the human rights of persons deprived of liberty, recommending
1149 interventions in different sectors of the carceral field. In the properly political
1150 arena, it recommended “comprehensive prison policies geared to the personal
1151 rehabilitation and reintegration of convicts into society”. At the judicial level it
1152 suggested legislative and institutional measures “to guarantee effective judicial
1153 monitoring of the enforcement of sentences”, in particular judges, and “measures
1154 necessary for providing public legal aid”. At the administrative level it
1155 recommended “monitoring the activities and decisions of ... authorities” involved
1156 in assigning work, bestowing prison benefits and sentencing decisions, to prevent
1157 irregularities and corruption; “notification of release orders”; “[s]etting up
1158 databases ... on all persons subject to criminal proceedings”; and “implementing
1159 post-prison follow-up and support programs”. At the prison level, finally, it
1160 pointed to the need to establish “nimble, equitable and transparent mechanisms
1161 for the awarding of slots in educational, vocational training, and work programs”.¹²²

1162 Each of these policies points to different sectors and dimensions of the
1163 processes that has led to the current prison crisis and its denial. Social-scientific
1164 studies are in the best position to disentangle the limits and possibilities that the
1165 immanent tensions of the carceral fields have in store for the advancement of
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1167 120 M.-M. Müller, above note 83.

1168 121 Nigel Rodley, “Torture and Conditions of Detention in Latin America”, in J. E. Mendez, G. O’Donnell and
1169 P. S. Pinheiro, above note 24, pp. 39–40.

1170 122 IACHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, Washington, DC,
2011, pp. 219–220, available at: www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf.

1171 progressive policies within prisons. The reconstruction of the system of power
1172 struggles, involving political, judicial, administrative, bureaucratic, social and
1173 reformist dynamics, is essential to advance in such a direction.

1174 1175 1176 **Conclusion** 1177

1178 This article has assessed the causes and consequences of what we refer to as the crisis
1179 of detention in contemporary Latin America. This crisis, we have demonstrated, is
1180 most visible in the overpopulation of the region's highly informal prison systems,
1181 leading to ongoing human rights abuses and prison violence. We have situated
1182 these developments in their political and penal bureaucratic context and
1183 highlighted the somewhat paradoxical role of democratization and political
1184 regime change, party politics, and neoliberalization and post-neoliberalization in
1185 triggering a "punitive turn" in the region that led to the emergence of penal State
1186 reform projects, combined with the rise of penal populism that contributed to
1187 both an historically unparalleled upsurge in incarceration rates and to the
1188 political, judicial and expert denial of prison violence and human rights violations
1189 in Latin American institutions of confinement. This denial has produced a state
1190 of institutional abandonment that is preserved by the interests of politicians and
1191 the judiciary, who are engaged in denying prison violence and human rights
1192 abuses while promoting and producing more punishment.

1193 By turning towards sites of contestation of the denial of human rights
1194 abuses inside Latin American prisons, we have demonstrated how under
1195 conditions of politically and judicially produced abandonment, human rights
1196 become the element of last resort for inmates and human rights activists, thereby
1197 transforming prisons into targets for humanitarian interventions through
1198 internationalization strategies. These interventions, however, ultimately operate
1199 according to the system of tensions of each national penal field, which in most
1200 cases leads to a denial of the structural violence of Latin American prison
1201 conditions, while still demonstrating a "will to improve". In some cases, however,
1202 international human rights strategies have contributed to policy changes, going
1203 beyond a predominantly symbolic concern.

1204 One important analytical and practical implication of our findings is that
1205 international human rights norms, standards, discourses and institutions are not
1206 a panacea for overcoming the crisis of detention in Latin America. Latin
1207 America's penal fields are what Dezalay and Garth call "two-tiered systems".
1208 These systems are composed of a cosmopolitan elite propagating and importing
1209 "grand principles" at the top, and "ordinary" agents, actors and bureaucrats at
1210 the bottom, whose routine practices continue to be defined by "clientelism and
1211 patronage".¹²³ These two tiers are so socially and institutionally separated that
1212 the impact of those actors aiming at improving local practices by going
1213 international is structurally limited if the two tiers are not in sync:

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123 Y. Dezalay and B. G. Garth, above note 83, p. 249.

1216 The cosmopolitan importers work to construct a new, internationally
1217 acceptable and legitimate state, but they must confront deeply ingrained
1218 practices at all social levels and the people who sustain those practices in
1219 ways that ultimately benefit the cosmopolitan elite. ... The devalorization or
1220 disqualification of local justice and local states in Latin America (and
1221 elsewhere) because of their embeddedness in patronage and clientelism also
1222 provides legitimacy and prestige for those at the top of the two-tiered system.
1223 They gain recognition, in part, for their sophistication of their criticisms.
1224 Their distance and their cosmopolitan connections and credibility, in other
1225 words, allow them to appear as a nobility speaking on behalf of the new
1226 sophisticated remedies for the state and the economy.¹²⁴

1227 In this regard, the way forward and possible way out of the crisis of detention in
1228 contemporary Latin America depends on the crafting of domestic and international
1229 alliances that bring these two levels of the increasingly internationalized penal
1230 fields in sync with each other. It should be obvious that in the over-politicized
1231 context of Latin America's "violent" and "securitized" democracies, in which
1232 political careers are built on the (re)production and denial of this crisis, such
1233 efforts will be met with severe resistance, but this is, in our view, the only way
1234 forward that would be capable of achieving a structural change in the region's
1235 prison systems. This change would also need to imply a critical rethinking and
1236 greater self-reflexivity of involved activists, scholars and experts who, often
1237 unintentionally, have contributed to this crisis in and through their own, well-
1238 intentioned work. As long as seemingly progressive discourses, such as "citizen
1239 security", which implicitly frame criminals as non-citizens, continue to proliferate,
1240 and as long as technocratic, efficiency-oriented expertise dominates in the region's
1241 penal fields, improvements may not come, even in the long run. In this regard, a
1242 better understanding of the unintended consequences of prison reform efforts and
1243 of the multiple interests involved is indispensable for moving out of the crisis of
1244 detention in the region. It is our hope that by mapping the institutional, political
1245 and bureaucratic terrain in which these reforms unfold, this article will make
1246 practitioners aware of this situation and help them to better navigate the over-
1247 politicized terrain of prison reform in the region.
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124 *Ibid.*