

Remaking the prisons of the market democracies: new experts, old guards and politics in the carceral fields of Argentina and Chile

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Abstract This article explains the evolution of prison policies in Argentina and Chile after the dual transition to neoliberalism and democracy addressing in particular the renewal of correctionalist prison rationalities propelled by human rights and managerialism expertise, their specific articulations and the differential institutionalization in the state. Going beyond objectivist descriptions of prison expansion, I delve into the emergence of a new symbolic order in democratic times that prompted the unexpected revival of rehabilitation programs and increased formalization of prisons regimes and account for their progressive subordination to security priorities. To explain these particular evolutions that contradict predictions of a direct drift toward a purely warehousing prison with greater informality under neoliberalism in Latin America, I engage in a comparative field analysis, analyzing the structure and dynamics within what I call carceral fields to account for the introduction of new rationalities and for their differential institutionalization in prison bureaucracies. After presenting the concept of carceral field and reviewing alternative accounts of prison change in Latin America, I show that the emergence of these rationalities follow the entrance of new experts within the field in democratic times, and account for their differential incorporation in prison policies and regimes analyzing how the interests of prison officers and political agents and increasing overcrowding conditioned the experts' strategies. This study, based on documentary evidence and interview data, demonstrates that these new legal and economic rationalities do not oppose drifts toward populist punitivism, but give it a progressive face, legitimating punitive policies while providing new power resources to elite prison administrators.

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Introduction: the (unexpected) revival of correctionalism amidst the politically fueled punitive upsurge

Amidst a regional trend of expanding prison populations and growing incarceration rates in Latin America ([44, 57], and in this issue), since the turn to neoliberalism in the mid-1970s in Argentina and Chile, Argentine federal prisons and the Chilean prisons have not drifted straight into warehouses to satisfy the anxieties of insecure Late modern societies in the periphery, as other works predict ([43]:172). On the contrary, in the last three decades new experts within what I call carceral fields—with the changing backing of political agents—have been vying, with relative success, around restoring or reinforcing a correctionalist prison—centered in classification, rehabilitation treatment and a progressive regime—either as part of programs to legalize prison regimes, protecting the human rights of inmates, or as part of a managerial rationalizations that included privatizations, or both. In Argentina, the new prison act of 1996 (Law 26.660), passed in the height of neoliberal structural reform of the 1990s stipulates rehabilitation and correctional programs, creates courts with special jurisdiction over prisons and instituted a prison ombudsman in 1994, to secure the rights of inmates. In Chile, after the neoliberal “economic modernizations” in the late 1970, the Chicago trained economists, backed by General Pinochet, reorganized the whole prison system to assure rehabilitation (see [51]) and in the first decade of democracy, whilst the government deepened the neoliberal regime in the economy, it put in place a “New Penitentiary Policy” aiming to rehabilitation, whilst the partial privatization model adopted in the mid-2000s includes mandatory treatments and counseling of inmates. These doctrines accompanied the expansion of prison building in late 1990s in Argentina and since the mid-2000s in Chile and the increase in budgets and personnel (see Tables 1 and 2 below). As we will see prisons have undergone not only quantitative changes, but also qualitative ones, that differ from the a simple turn toward warehousing prisons [43] and increased informalization [57] in prison regimes in Latin America.

To explain national variations in prison policies and going beyond perspectives that posit a regional convergence toward policies of pure confinement and more informal prison regimes, in this work I dissect, in a comparative scheme that is both descriptive

Table 1 Prison personnel, population and budget in Argentina (1962–2010)

	1962	1970	1975	1980	1985	1990	1995	2000	2005	2010
Argentina Federal Prisons										
Personnel	3728	4144	6700	8290	7849	8100	8100	8120	8565	8700
Prison population	4100	5847	4951	5093	2639	3830	6243	8000	7980	9400
Imprisonm. rate	70	97	83	84	45	63	104	106	106	156
Federal budget share	n.d.	0.48	n.d	0.42	0.26	0.49	0.38	0.44	0.47	.42

Sources: For personnel: Servicio Penitenciario [73]: 292, Boletín Penal y Penitnciario, years 1978, 1979, 1982, 1988, 1990; D’Antonio and Eidelman [21]. For prison population: National Criminal Policy Directorate; CELS in Argentina, and for imprisonment rates own calculations for city of Buenos Aires based on proportions of inmates with last address in city of Buenos Aires in Federal Prisons; and Rico [51, 53, 56, 71]. For budgetary share: National Budget Directorate, Argentina

Table 2 Prison personnel, population and budget in Chile (1962–2010)

	1962	1970	1975	1980	1985	1990	1995	2000	2005	2010
Personnel	2537	3437	n.d.	4673	4900	5000	5011	8744	10,537	14,297
Prison population	13,952	13,709	15,000	14,726	21,000	22,593	20,962	33,050	37,033	56,651
Imprisonment rate	162	171	144	116	173	172	146	216	228	333
National budget share (%)		n.d.	n.d.	0.25	n.d.	0.26	0.72	0.78	0.7	0.9

Sources: For personnel: Valenzuela and Barzelatto [19, 54, 77]; For prison population: Rico, [51, 53, 56, 71]. For budgetary share: National Statistics Institute, Chile

and explanatory, the distinctive policies and institutional paths taken by prison bureaucracies, accounting for the unexpected surge—in a period of ascendant neoliberalism—of correctionalist rationalities fuelled by attempts to incorporate human rights protection and managerialism, and their eventual subordination to security priorities. I argue that these developments make sense if we see prison policies determined not mainly by macro-structural transformations, but by the dynamics of carceral fields—with historically specific structures and symbolic orders—that evolve with relative autonomy from macro-political and economic changes and that mediate between public demands for punishment and policy and administrative outcomes. Even in the context of common transitions to neoliberalism and to democracy, conceptions about prison roles are preserved, revived or created in these semi-autonomous arenas at the same time that the different structures of those spaces—in particular the different alliances (produced by the convergence of strategies of agents with different capitals), and power relations between new experts, elite prison bureaucrats and new democratically elected authorities—determine different prison policies and condition their institutionalization impacting prison regimes.

With a comparative field theory analysis I overcome the limitations of neo-marxist and foucaultian perspectives to account for changes in prison policies in these cases, and go beyond the generality of Late modern and neoliberal state-making accounts of prison change in Latin America. The field theory perspective allows me to explain, first, the unexpected revived concern for rehabilitation along with the emergence of human rights and managerialist programs and rationalities within the fields, that gave rise to differently articulated “ideological constructs” of “social control talk” which are both “sources of power for guiding and justifying policies” and “stories [with] contradictions, anomalies and paradoxes” ([18]: 115). Second, reconstructing the structures and dynamics of the carceral fields I also explain why these new ideological constructs had different levels of institutionalization, with distinct combinations in each prison system. I explain how in Argentina human rights principles and techniques, which included the right to rehabilitation ended up being combined with a security orientation sponsored by the government and the prison guards whereas in Chile, rehabilitation programs ended up combined with managerial standards and priorities that facilitated privatization of prisons and eventually got displaced for security priorities. The concept of carceral field, as we discuss in the conclusion, also allows us to account for the timing of the punitive turns in each country in the last decade.

The carceral field and prison policies in democratic Argentina and Chile

To explain the recent evolution of the prison bureaucracy in terms of policies regarding organizational goals and prison regimes over the last three decades (1980–2010), I locate prison bureaucracies within carceral fields. The carceral field is defined here as the space of positions and struggles where different agents holding bureaucratic, political, legal, academic, and journalistic capitals vie for the authority to create and institute prison policies and determine prison priorities ([60]:34). The carceral field is located at the intersection of the prison sector of the bureaucratic field [10], the political [11], and juridical fields [9]; it neighbors the academic, journalistic, and economic fields. This field gets constituted with the consolidation of a prison system within the state field, that becomes focused on punishment and corrections of inmates rather than mere sequestration and confinement. This change is correlative of the creation of positions whose occupants are not merely oriented towards political, military or judicial standards, but also toward specifically correctional aims, toward managing what Foucault has identified as the “carceral in relation to the judicial,” that “excess on the part of imprisonment in terms of legal detention” ([28]:247).

Positions in the carceral field are hierarchically (vertically) organized according to the control of authority over prison policies and priorities. With the proliferation of correctionalist expertise, the space becomes organized (horizontally) by the opposition between a more autonomous pole, where agents are oriented toward pure penological interests—varying from pure discipline models to rehabilitation, and a heteronomous pole, where agents are oriented towards extra-penological concerns, i.e. prison order and general security, such as the government, the press, or private contractors (see Fig. 1). The existing power relations and the symbolic order mediate the demands of agents from the political field sector and external agencies (i.e. the military, markets, the press, the overall political field), at the same time that the structure of position-takings of different types of agents—conditioned by their positions and trajectories—determine prisons policies and produce changes in prison bureaucracies in specific directions. Those changes and development path may be very different in cases with otherwise similar societal contexts such as those of Argentina and Chile with transitions to democratic regimes, adoption of neoliberal regimes, increased social inequality, and heightened criminality, in particular since the 1990s. Likewise, very similar field structures may contribute toward policy convergence, even in very different societal contexts. In this study I will show that the different structures and specific changing balance of forces in each of the carceral fields determined that prison regimes and policies ended up being framed under the principles of security and human rights in Argentina and by a combination of security and managerialism in Chile.

The analysis of the trajectory and strategies of experts and the dissection of the changing relations, alliances and struggles, between new experts, the prison bureaucracy and the central-government agents to change prison “ideologies”, policies and regimes allows us to overcome certain heuristic loopholes of some neo-marxist, Late modernity, and Foucaultian perspectives for explaining recent changes in these Latin American prisons policy goals and prison regimes.

Neo-marxist perspectives conceive the changing prisons goals as ultimately derived from transformations in the political economy (i.e. [23]) and conceive prison rationalities as idealistic epiphenomenon the masquerade the real prison functions [22]. From

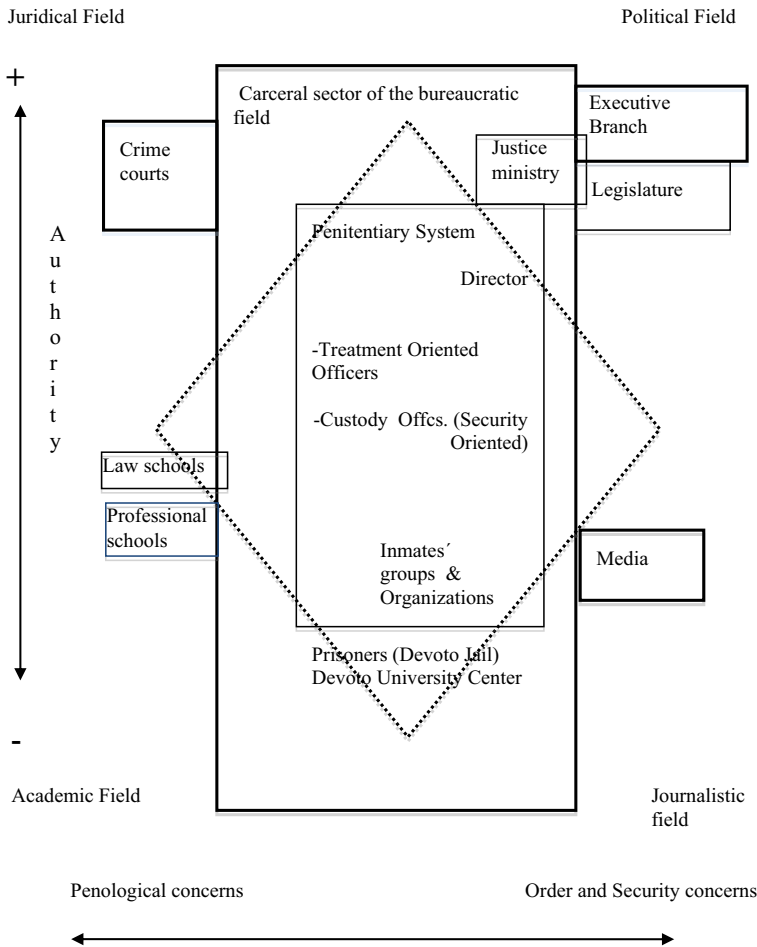


Fig. 1 Schematic structure of the carceral field

this perspective “rehabilitation” programs are ideological devices used to cover up the “real” warehousing function of the prison under neoliberalism, that of incapacitating marginalized sectors. With this view is difficult to explain the rise and demise of such “ideologies” within the neoliberal regime periods of Argentina and Chile. A variant of the neo-marxist tradition is Melossi’s approach [50] who, combining Gramsci and pragmatism, tries to solve these issues analyzing “hegemonic vocabularies of punitive motives” that intellectual, moral, political and academic elites produce to preserve or legitimate social control practices functional to new socio-economic structures. Still, this approach do not explain the plurality of vocabularies, their variations within the same mode of production, or the differences and oppositions between elite politicians, bureaucrats and experts. From the field-theory perspective, through the analysis of the *trajectories* of new experts, I explain the (re)emergence of discourses and their variety. Analyzing the positions of agents in the field we can understand the alliances, collaboration or fights between prison administrative elites, experts and political agents, and

account for the differential incorporation of new vocabularies within prison bureaucracies as well as their specific changing configurations.

From a field theory perspective the carriers of new rationalities, usually from professional groups, or from collectives with administrative careers and socialization experiences (corps), such as guards, are not merely members of the “new middle class of service professionals” whose “ideas reflect shared cognitive systems of the wider society” ([18]:102). New experts and professionals are carriers of different types of cultural capitals (institutionalized in economic degrees, law degrees or in administrative seniority), with specific trajectories and who, even if they share cognitive systems of the wider society, they tend to emphasize their distinctive cultural capital and know-how (institutionalized or embodied) to gain power and legitimacy in relation to the carceral arena. They engage in competitive struggles to gain control over certain areas of practice, which include alliances or collaborations, both with other professional groups as well as with top bureaucrats and or political agents, deploying more or less learned strategies (reports, research, programs), or juridical tools (claims, cases), or politically based strategies (alliances with political agents, press campaigns, participation in international fora, etc.).

Finally, this perspective centered in agents and groups, also goes beyond Foucaultian approaches that limit the analysis to identify rationalities structuring prison realities. If, as Sozzo argues, contemporary Argentine prisons embody a “mixed economy of punishment” that contains both “liberal-correctionalist programs” along with “authoritarian” tendencies toward purely incapacitating prisons [74], following the trajectories and strategies of professional groups and prison officers I must explain the paradoxical reinforcement of *both* liberal-correctional and despotic-authoritarian rationalities in each case since the return of democracy. At the same time I also explain the different concretizations, the human rights and security combination in the Federal Argentine prisons and security and management ensembles of the Chilean ones. Finally, and decisively, I connect their emergence and adoption with active carriers and interested competitors within the fields.

In what follows, I analyze each case separately, dividing their analysis in two stages: (i) an initial objectivist moment covering the period before transition to democracy (1990 Chile; 1983 Argentina) where I briefly describe the correctionalist prison system in each field, highlighting the position of correction professionals and prison officers within prison administrations and close referring to the militarization of this prison regime during dictatorship and (ii) a second moment of analysis where I concentrate on the democratic-era strategies and struggles of agents and organizations. I dissect the struggles and alliances between the new central government, new experts and prison officers. I close each case analyzing how, in both countries, the turn to punitive directions impacted the positions of rehabilitation experts, human rights’ activists and managerial experts in each case.

To substantiate my argument I use documentary and interview data collected in Santiago de Chile and Buenos Aires between 2009 and 2011. To reconstruct the historical objective trajectory of the prison organization in relation and the development of internal factions, I resort to secondary bibliography and official documents. In the analysis of recent changes I use documents and data from 46 in-depth interviews with present and former: (i) high-ranking prison officials directing training, general planning, rehabilitation and internal security under-directorates; (ii) members of intervening

NGOs; and think tanks; (iii) experts in public and private universities, and (iv) advisors and former incumbents of the Departments of Justice in each country. I inquired about their trajectories, views, assets, relations and roles in the reform process. I then analyzed the agents' reconversion strategies, their alliances and position-takings within the field connecting them with struggles around reform.

The (historically) volatile and (contemporary) contradictory prisons of Argentina: early correctionalism, deep militarization, and weak human rights regimes

Correctionalist professionals and the corps of prison guards in Argentina: 1930–1980

The carceral field structured around federal prison policies began to take shape in the 1930s, when the National Directorate of Penal Institutions was created. This national prison system represented the culmination of a long and protracted process in which lawyers and medical doctors colonized and converted a loose archipelago formed by a national penitentiary, capital city prisons and jails connecting them explicitly to a correctionalist orientation. ([12]: 114) After the 1930s the federal prison system expanded and became organized around a *progressive regime*, where prison officers and doctors steeped in positivist criminology extended their hegemony throughout the organization, extending it later unto “big houses” and penal colonies ([12]: 121). From the 1930s until the late 1960s, the system became more centralized within a unified administration, organized within a coherent plan and with internally regimented prisons increasingly subject to logics developed by correctionalist professionals within the federal administration. The system shifted from a big-house logic of the 1920s centered in the National Penitentiary and the Ushuaia Presidium to a correctionalist model of the mid-1960s organized around penitentiary complexes, comprising jails, prisons and colonies ([39]: 240–266).

While the initial formation of the correctionalist programs within prisons was beginning to take shape, the consolidation and centralization of the prison administration, allowed career prison bureaucrats—with no professional credentials but ample administrative experience—to become increasingly preeminent within the prisons. By the mid and late 1940s, prison guards began to share power with the law and medical professionals, and progressively acquired a greater say in prison policies. Under Juan Peron's first presidency in 1946, the ascending prison guards eventually took control of the National Prison Directorate.

The advance of correctionalism, in the next two decades was punctuated by periods of politicization, where prisons were used for political repression. The militarized prison officers—steeped in a militarized outlook and techniques based on coercion and intelligence gathering—progressively eclipsed the correctionalist professionals in establishing prison priorities and routines. By the early 1970s, National Security Doctrine began replacing penological know-how, reflecting the ascent of the militarized officer and the direct control of prison by the military. Between the mid- 1970s and until 1983, security and counterinsurgency orientations eclipsed all trace of the consensus around rehabilitation. After 1976, when the military deposed President Isabel

Peron, the penitentiary officers and subordinate security fully adopted a counter-insurgency logic displacing rehabilitation professionals.¹ The regime became highly regimented, inspections became more violent—some ending in massacres—and killings of “fake escapees” became common.²

By the end of dictatorship, then we find the total militarization of the prison bureaucracy involved in political repression. This militarization sent legal scholars, criminologists, and penologists who had invested in the field in during the late 1960 and early 1970s to the periphery of the field, taking refuge in the academy, or even exiled.³ These groups would prepare a counter-attack grounded in the language of human rights. By the same process, the prestige and authority of elite prison officers became dependent on the adoption of militarized views and procedures, but exposed them to suffer a devaluation of authority if their military master would lose power and general political legitimacy. Finally, common prisons became politicized, fueling prison turmoil in democratic times.

Prisons in turmoil in democratic Argentina: politicization, human rights and conflictive prisons (1984–2005)

The transition to democracy presented an opportunity to the expelled criminologists, the devalued penologists, and marginalized legal scholars to recover positions in the center of the carceral field. Their return was made possible through the backing of the democratically elected executive branch. The executive branch needed to gain control over the prison administration, at least formally, and it enlisted these dispersed old experts to do so. The return of the old experts and the entrance of new ones involved the development of a novel discourse that combined the traditional reformist penology with human rights. The return of these older experts, reviving rehabilitation through introducing human rights’ techniques and standards took place in waves, first under the backing of the first democratic President Raul Alfonsín (1983–1989), and then under the auspices of neoliberal President Carlos Menem (1989–1999). The advance of the old experts implied imposing their authority over prisons that had become enormously disordered and riotous after transition, and following policies to keep the number of inmates low (see Table 1 below). These riotous and demanding prisoners, paradoxically, saved the prestige and power of the militarized officers and guards, who reconverted themselves into “internal security specialists,” fighting the advance of the new political authorities and new experts.

¹ Within the counterinsurgency framework, prison units and pavilions become “theatres of operations” and the service became part of a “war against subversion,” led by the military commanders that directed the prison administration.” (BPP 6.16.1977)

² Daniel Barberis, a common prisoner, recounts the “Devoto Massacre” where on March 13, 1978 at the Devoto Jail of Buenos Aires, after a member of the block disobeyed the order to turn off the T.V., and was backed by the “gratas,” “who were getting tired of the harshening of beating”, guards attacked the cell block the next day, and killed, through clubbing and shooting or deaths from fire, 61 inmates (See [7]).

³ The militarization caused the disband of criminological experts. Penological expert Juan Carlos Garcia Basalo took refuge in the Catholic Universidad del Salvador. Liberal criminologists identified with the political opposition were persecuted, jailed and sometimes exiled.

Implusive transition, retreat of the militarized guards, and mobilized prisons (1983–1989)

The transition to democracy on December 1983, after the defeat of the military regime in the Falkland Island war, sparked struggles in the political field, in all sectors of the bureaucratic arena dominated by the military and also struggles in the carceral field that produced a deep change in the field's power relations within a field that remained dominated by the executive branch. In the prison arena the executive branch policies followed Alfonsín's program of republican revival, which included fighting the military on the political front and reviving republican and moral potentialities of public servants within state bureaucracies, including the protection of human rights and the return to the rule of law. In the prison bureaucracy this initially consisted of introducing human rights standards and designating lawyers as directors.

The central government policy meant the return of lawyers and penologist and a change in the position of militarized prison officers. The Justice Department, the Under-Secretary of Justice, and the Prison Department were put in the hands of lawyers, so as to fulfill Alfonsín's project of demilitarizing non-military state organizations and reinstating the rule of law. The first director devalued the militarized self-definition of prison officers and guards, altering training, and reevaluating rehabilitation and treatment, all couched in the double umbrella of human rights and social science.⁴ The new focus on rehabilitation and human rights also meant a change for officers. The new policy promptly incorporated training programs,⁵ which favored "treatment oriented officers" rather than *security oriented ones*. Prisons were put in the hands of officers with "a profile of office work, better educated, with better manners" (Interview, Officer Daniel Legide, September, 2010). The "better educated" officers displaced the *security-oriented* officers who still controlled *manu militari* the most important prisons, as well as the "prisoner oriented" officer, ("presero"), a sub-species of the security-oriented officer who relied on negotiating with inmates. The security-oriented officers lost control of important prisons and lost prestige in the face of the better-educated officers. Their weakened position coincided with the inmates intensifying their organization and demands, which further politicized the prison.

⁴ In his first speech he declared that "order and discipline will be sustained firmly and decidedly, but such power will be exercised within the frame of human rights. [...] We will promote the professionalization of penitentiary personnel to fulfill his important social mission... We will produce detention conditions that will mirror as much as possible those outside the prison. The imprisoned man is a social reality and the state must provide the means to achieve his readaptation" (SPFABP 1583, 12.31.1983, and 10.8.84).

⁵ The officers schools encouraged "ethical, legal, disciplinary and social science skills to understand human behavior and the social causes of crime, and bureaucratic realities." (SPFABP, 2.24.84). The custodial function was now "considered judicial, with a pedagogical bases and social objectives." Subordinates would get retrained on "principles and methods to improve their relations with inmates" (SPFABP, 2.24.86), and on "law, social psychology, social science research techniques, penitentiary problems and after-release programs and alternatives to the prison." Mid-level officers would study "Prisonization, architecture, education, social relations, social work and after-release programs" (SPFABP, 5.31.1984). On August 1984 the United Nations Code of Conduct for Law Enforcement Officials became mandatory. Even security skills and weapon handling training was framed within "the conscience of [inmates] human rights." (SPFABPP, 5.29.1984).

In this new era, rehabilitation included the practice of democratic values in the society of captives, whose voice was now to be taken into account. Cells doors were opened, and following programs proposed by inmates themselves, leaders were elected as representatives for each cell-block.⁶ The citizen-prisoners promptly increased their power—but not through collective petitions, as the democratic ideal suggested, but through old-style protests and prison riots.⁷ Riots thrust the prison back onto the public stage, and were depicted in the recently freed media. The combined economic and political crisis, where the Executive branch lost power in the late 1980s, permitted a further advance of courts and human rights activists.

The Supreme Court developed a more liberal jurisprudence beginning in 1984, protecting the rights of citizens against the “arbitrary intervention of punitive powers and the maximization of fundamental freedoms vis-à-vis penal power and individual security,” as opposed to an “authoritarian” jurisprudence ([16]:31–31). At about the same time, human rights activists began focusing on torture and abuses within prisons in democratic times and not just those of the dictatorship era. However, with the political crisis the government decided to limit the prosecution of state crimes in 1987 and the deterioration of prison conditions in 1988 led human rights groups to begin to invest in the carceral field on behalf of common criminals. With this new human rights policy “all political channels of [human rights] organizations to introduce their demands disappeared” ([58]:61). Deprived from their access to high government circles, human rights organizations retreated back to their traditional tactics of denunciation and reporting. Intrepid lawyers from the human rights NGO CELS (Social and Legal Research Center) disguised as journalists, began monitoring prisons [78]. Soon after, they began producing reports on state violence, including violence by prison guards against inmates.

By the end of the first democratic administration, the carceral field had a slightly changed structure and an incipient new heterodoxy around human rights and rehabilitation, combined with a political concern for order. The subfield remained dominated by the executive branch, that favored the return of legality, demilitarization, and correctionalism, but also decarceration policies not to aggravate the highly riotous conditions in prisons. But the personalist nature of the reconstituted political field in Argentina [17], with weak parties, and highly subordinated to political leaders, will not secure a permanent political backing to the strategies of the new experts. The ascendant trajectory of new human rights experts and correctionalist specialists, and the declining one of prison officers will soon to change directions (Fig. 2).

⁶ The strategy was oriented to increase responsibility and followed the “Social Prisoners Internal Commission,” an organization of inmates that emerged in the Devoto Jail since the early 1980, that promoted the collective representation of inmates, and which authorities backed ([7]:48).

⁷ The decisions to allow inmates to regulate themselves in pavilions, and in particular in the Caseros Jail ([47]:62), combined with the sudden retreat of guards, lead to a 4 days riot of the New Caseros tower jail on April 1984 (Interview Security Officer, Daniel Legide, September 2010).

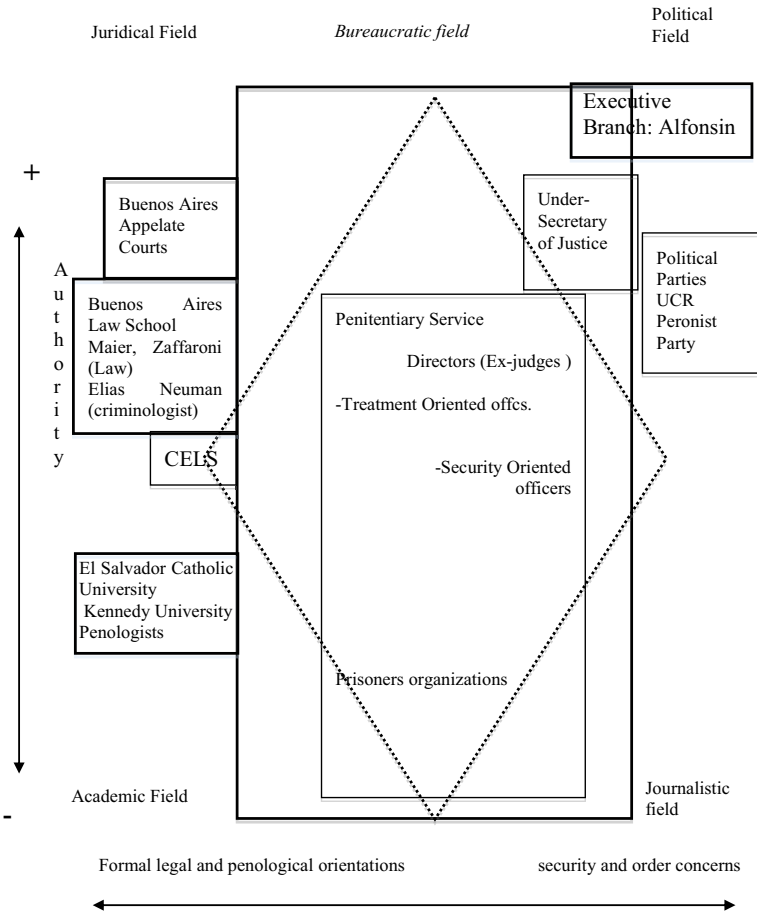


Fig. 2 Argentine federal carceral field, circa 1987

The return of correctionalism and entrance of human rights activist to the prison administration under Menem’s neoliberal decade (1989–1999)

Throughout Menem’s decade-long tenure, in which he implemented a drastic neoliberal structural adjustment in the economy and the state [75, 76] the politicization of the prison did not lead to a purely security-oriented prison nor to the “increased informality and despotism” described in general for the region [57]. Instead, it led initially to the advance of judicial authorities and legal experts over prison policies and regimes. The political problem of securing order and reducing scandals in the form of prison riots, allowed judges, human rights experts, and penologists to reinforce their respective positions in the field and to continue to uphold the humanizing and correctionalist program within prisons.

Menem’s had an oscillating prison policy, beginning with a policy of repression of prison disorder and continuing then with a reformist path that gave power to penologist and human rights activists. Menem’s first Ministry of Justice, discontinued the liberal and correctionalist aims of the previous administration and put “security-oriented”

officers back in power within prisons, displacing “treatment-oriented” officers. The new directors revived the security orientation,⁸ training⁹ and mystique¹⁰ of the dictatorship years, expanding maximum-security regulations to pretrial detention centers. Still even if resorting to the militarized techniques he was unable to reduce rioting.

In the middle of the prison riots crisis of the early 1990s, and after failed attempts to advance privatization of prisons to reduce overcrowding and improve prison conditions (*El Cronista Comercial* 1990 July 6, Clarin 1990, July 6), Menem enlisted Leon Arslanian—a judge in the 1985 Federal Court that tried the Military Junta and with an enormous ascendancy in the judicial and criminal law circles—as Justice Ministry. Arslanian, a lawyer and criminologist, announced a “major plan for a new Penitentiary Law, a new organic law, regulation for inmates on remands, and re-training programs” (SPFABP 7.20.1991) oriented to again demilitarize prison officers and regime.¹¹ He also created a special commission on human rights within the Justice Ministry to deal with reports made to the Inter-American Commission on Human Rights. His tenure was short but the teams he assembled to work on prisons and the criminal procedure reform opened the door for judges, human rights activist, and old-time penologists.

Arslanian’s successor, tried the same repressive strategies, giving more power to security officers with their policies of despotic order, only to see them fail again. As a last-minute move, the minister ordered prosecutors to study the cases of prisoners on remand and determine who could be freed if they had been on remand for more than the 2 years (which is what the Inter-American Covenant on Human Rights allowed). The promise to review each case suddenly reduced protests for a couple of months. The minister realized that it was important to consider cases individually, but also to give more power to judges and to take into account the rights of inmates. Special judges in charge of controlling sentences, human rights activists and expert suddenly became important and useful. Their judicial approaches de-politicized and reduced prison revolts, instead turning them into individuals demands which reduced prison turmoil.

The 1992 criminal procedure code created the judges in charge of supervising prison conditions and sentences (“jueces de ejecucion penal”), and three supervisory courts were already in place by 1993. Even if these judges did not command much power within the judiciary,¹² they created expectations among the inmates. The next

⁸ New director Officer Calixto Salas revived old regulations from the dictatorship era ordering mid-level officer in charge of security in prisons to re-read the long and detailed 1979 “Internal Order Regulation” that has as its basic principle: “The need to impose and maintain the maximum discipline” (ch. 1) based on the officer’s “moral virtues of imposing his will, braveness, integrity, strength and energy.”

⁹ He also changed the annual conferences program, put in place in 1986—that covered information, relations, and criminology—by a new one centered on military training, self-defense and target shooting (SPFABP 5.2.1990).

¹⁰ The new director also restored the “esprit de corps, ..moral improvement and greater discipline as the indispensable means to secure the adequate application of our regulations and fulfill our mission of reintegration...with the backing of political power, our comrades, and even of our sister security forces” (SPFABP 12.27.1989). He denounced the “criticism of the romantic and abstract humanists” that know nothing of concrete realities and real solutions.”(SPFABP, 7.20.1990).”

¹¹ He dreamed of putting university trained criminologists to direct the prison service putting a ceiling to the careers of officers, where they could not advance beyond the mid-levels.” (Interview Daniel Legide, October, 2010) and a “cleansing of militarized officers” (Interview, Officer Ayala, December, 2010).

¹² These judges occupy a very low position within the judicial hierarchy, considered more “an administrative function, than a veritable judicial functions, managing an area that the judiciary has historically left to the administrative power”(Interview Eugenio Freixas, first execution judge, September, 2010).

innovation was the creation of the penitentiary ombudsman in 1993 (decree 1058). Human rights experts built the new ombudsman position and institutionalized their know-how within the bureaucracy.

The first prison ombudsman was Eugenio Freixas, a human rights lawyer who had worked in National Commission on the Disappearance of Persons (CONADEP).¹³ As prison ombudsman, just as he “had submerged himself into the dark entrails of the CONADEP files...he now descended into the dark entrails of prisons” (Interview Eugenio Freixas, September 2010). Following his human rights activism techniques, he investigated, documented, reported, and made recommendations on prison policies [29]. In 1994 prison protests began to subside. According to Freixas, his work helped “to depoliticize prison demands, from a political logic where inmates addressed the executive-power directly, the inmates started concentrating on purely prison and judicial issues” (Interview Freixas, September 2010). He also influenced the regulation of internal sanctions within the new Penitentiary Regime Act, Law 24660. This last law was also the work of the old penitentiary experts who were now back in the prison administration.

Old penologists, steeped in the correctinialist rehabilitative view acquired authority again as advisors to a new ministry of Justice since 1993. They were Julio Aparicio, a social worker who served in the Foundation for Ex-convicts of the capital (*Patronato de Liberados*) for two decades and Juan Carlos Garcia Basalo, the old penologist from the Penitentiary Service, who had been responsible for the correctionalist programs implemented between 1963 and 1971. Just as Ombudsman Freixas used the space to consolidate human rights expertise, producing reports and policy recommendations, Aparicio and Garcia Basalo wrote a new penitentiary law, placing correctionalism and community sanctions at the proposal’s center. They also designed a “Master Plan for the National Penitentiary Policy” [55] and drafted what became Law 24660, the Penitentiary Regime Law of 1996. Going beyond pure legalism, they managed to construct new prisons and refurbish old ones, to reduce violence and overcrowding. They also implemented a new treatment methodology centered on developing a sense of legal consciousness among inmates (Secretaría de Política [72]) (Fig. 3).

By the late 1990s new control judges, the ombudsman, and the “treatment oriented” Secretary of Penitentiary Affairs in the Ministry of Justice had built their new positions and institutionalized them within the field. However, protection of human rights and rehabilitation promise of rehabilitation began to coexist more and more with security concerns as a wave of punitive populism flooded the Argentine prisons, including those of the federal justice system. This punitive wave, however, reinforced the new structure of the carceral field with power shared by rehabilitation oriented experts, prisoners’ rights offices and the security oriented officers.

Following the realignment of political forces and the restructuring of parties, after the presidential transition of 1999 and the ensuing economic and political crisis of 2001/2002, the political sector of the field assumed a much more punitive stance

¹³ Freixas had close contacts with CELS in the early 1980s, and who later on worked in the Secretary of Human Rights of the Interior Ministry in 1985, organizing the files of the Human Rights Truth Commission to use them for prosecution of state crimes. After 1989 he worked in the Chancellery dealing with the Inter-American Commission of Human Rights on human rights abuses during democracy (Interview, Eugenio Freixas, September 2010).

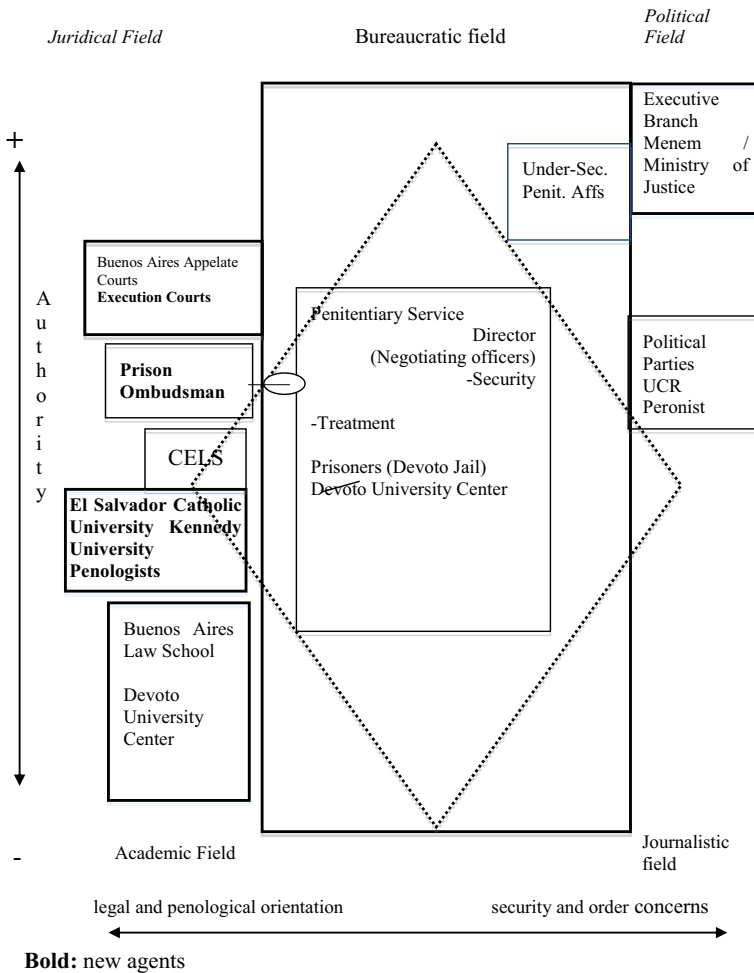


Fig. 3 Argentine federal carceral field, circa 1998

([39]:266–270, [74]). Increased incarceration provided a new opportunity for security-oriented officers to boost their positions within the expanding prison, but also, to human rights groups leading to what I call the liberal-warehousing prison of Argentina.

In the prisons and the administrative sector, security eclipsed correctionalism and human rights concerns. After the inauguration of President De la Rúa, riots soon returned [1]. The central government this time was confident in dealing with riots through inaugurating maximum-security buildings and implementing programs meant only to produce order. This prison architecture was very different from others, following the design of US Penitentiary Complexes. The administration put the new Penitentiary Complexes to full use, repositioning security-oriented officers and developing new “supermax” treatment programs. Still, even the maximum security prisons combined notions of treatment, human rights, and security. The Justice Ministry passed a “Maximum Security Treatment Regulation” that targeted those who committed “very

serious crimes” and those who “led or participated in riots or serious alternation to order, having attacked other prisoners or guard with individuals.”¹⁴ This “meta-prison” [80] of maximum security divisions merged the treatment approach with a human right rationale: The “treatment for maximum security” aims both to “protect the human rights to safety and freedom of inmates” and “treat” inmates so as to teach them how to subject themselves to ordered routines, including evaluation by criminology teams that evaluate “maximum security inmates” every 3 months. Prison officers specialized in security progressively institutionalized their know-how¹⁵ and displaced the “negotiators” from the most important prisons. But, as the security-oriented officers increased their power, the human rights experts increased theirs within the carceral field.

While correctionalist experts were marginalized, the Radical and Peronist Party used their last remaining political contacts and resources to reinforce the position of the ombudsman, putting the position out of reach of the executive branch. Once more the office fulfilled its function of de-fusing prison protests and writing scathing reports [64] questioning the security officers.¹⁶ His recommendations had limited direct impact in 2003 during the “normalizing” presidency of Eduardo Duhalde, and faced difficult times under the second wave of penal populism that emerged in 2004. In the subsequent years, under the presidency of Nestor and Cristina Kirchner (2003–2011), the ombudsman increased its power, with a permanent Observatory for prisons in the capital city and greater presence in all federal prisons throughout the country.¹⁷ This increased protection of inmates, contributed again to a reduction in the violence of guards against inmates, and allowed for the continued documentation of the violence, abuse, torture and despotism that takes place behind the walls of the new penitentiary complexes and old prisons.

In summary after the return of democracy along with the highly riotous prisons and the interests of the executive branch, the return of correctional experts and the investment of human rights activists, converged to reinstate rehabilitation policies and increase the legal protection of inmates, at the very moment that the country transitioned to neoliberalism in the economy. The progressive pacification of

¹⁴ A new classificatory system was devised to isolate and treat violent inmates, subject to 24-h isolation cells, with maximum of groups of five to circulate and shower, 2-h walks, weekly visits, and a phone call every 2-week, and “orange uniforms.”. The “treatment for maximum security” aims both to “protect the human rights to safety and freedom of inmates” and “treat” inmates teaching them subjection to ordered routines, including criminology teams that select and evaluate “maxim security inmates” every 3 months. The main objective was to “reduce intra-carceral violence, costs and produce a safe environment.” (SPFABPN 7.25.2000)

¹⁵ In 2000 a “Permanent Security Commission,” to “study and assist in the general issues of security” was created. Each Penitentiary Complex acquired its own “Security Command” in charge of intelligence gathering (SPFBPN 1.24.2001) and “Security Brigades”, in charge of fires and emergencies are created later everywhere (SPFBPN 8.18.2001). Security specialists even got assigned to direct the Subordinates officers school and published in the house organ their own “evaluations” of prisons (See [47]).

¹⁶ The report describes treatment subordinated to “an hegemonic concern for security and internal order” (p. 58), with inmates classified “according to internal discipline and security concerns, aiming to preserve the façade of criminological treatment to produce a “quiet prison” (p. 68) denounces “no legal forms followed when imposing sanctions” (p. 70), “limited education and training of inmates” (p. 142) and guards’ violence with “welcoming hitting,” demanding inmates “obey them, or other” (p. 124). The report also made “policy recommendations”: to demilitarize guards, reinforce criminological services, increase administrative personnel and retrain personnel, and community alternatives to prison” ([64]:164–166).

¹⁷ From attending 5900 petitions in 2000, it attended 10,000 in 2005 and jumped to 25,000 in 2010 Since their expansion, the grievances for guards’ violence during inspection went from 63 in 2003 to 35 in 2010. Indeed most complaints are for petitions of early release, etc. (40 %.) [64–66].

prisons—thank to the judicialization of prison relations, the intermediation of human rights and the building of new facilities—combined with the changes in the political arena, eventually lead to a populist punitivism where the correctional experts were put aside, while human rights preserved and even expanded their clout, sharing it in a tense coexistence with security oriented officers. Having reconstructed the return of rehabilitation, and the resulting contested symbolic order I now turn to the more stable and progressive evolution of the democratic-era Chilean prison policies.

Prisons in neoliberal and democracy Chile: late correctionalism, light militarization and managerially legitimated despotism

In democratic Chile, between 1980 and 2000 we also observe the reinforcement of rehabilitation policies in prisons amidst the deepening of the neoliberal regime in the economy. Here, the reinforcement of correctionalism in the 1990s, has a different origin to that Argentina, at the same time that it is not accompanied by human rights rationalities but by managerial rationalities. In Chile we shall speak of reinforcement of rehabilitation and not of a revival as in Argentina, because the correctionalist model, which developed within the heteronomous prisons in the late 1960s, was *preserved* during the dictatorship. In what follows I first describe the consolidation of the rehabilitation-correctionalist prison in the late 1960 within the carceral field, and then analyze how the economists first institutionalized their managerial rationality in the early 1980s which preserved the correctionalist orientation of prisons. Within this managerial logic they first preserved the positions of rehabilitation professionals (psychologists, doctors, etc.) in their confrontation with prison guards. Later on, a decade into democracy in the early 2000, that same managerial rationality was deployed to secure the privatization of prison services—where prison directors turned into “Prison” managers—displacing rehabilitation and barring human rights agents and policies.

The consolidation of the carceral field in Chile (1930–1970) and the weak implementation of correctionalism in the heteronomous prison

In Chile, the carceral field, as a space of objective competition around prison policies based on different types of capitals—political, administrative, judicial, academic or journalistic—also began to be consolidated in the early 1930s. Within it, the correctionalist perspective—centered on classification and treatment through vocational training, labor and schooling—even if only weakly implemented within prisons, became the guiding consensus shared by members of the judiciary, the state departments, the academy, and successive prison administrations. Here the correctionalist program developed very slowly within the carceral administration, and its emergence was parallel to the development of a centralized carceral administration. The centralized administration evolved out of an extensive archipelago of penitentiaries, presidiums, jails, and penal colonies built during the nineteenth century. In the 1920s, prisons were placed under a single authority, services were made homogeneous, and the intermittent visits by the judiciary were replaced by permanent and unified control by the National Prison Directorate, which favored rehabilitation and reeducation of inmates. In 1928,

President Ibañez del Campo passed a “General Carceral Regulation” “relating the existing regulations with the dictates of modern penal science...within an ample reformist criteria...with the aim of having unity of action and regenerating delinquents” (Carceral Ordinance 805). Within the prison administration middle-class professionals, lawyers, and doctors, advancing a penology and positivist criminology discourse, gradually acquired more power.¹⁸

As in Argentina, from the 1940s to the 1960s, prison wards, with nothing but administrative experience, also consolidated their position within the bureaucracy, obtaining career stability and formalizing their practical dominance within prisons over lawyers and doctors [48]. The penitentiary officers, in contrast to what happened in Argentina, were demilitarized during the 1940s and became “penitentiary technicians, with specialized training. By 1960 both the prison officers and the rank and file guards presented themselves as “civilian” employees, technically capable and embodying a bureaucratic tradition distinct from that of the military ([61]: 29), to the point of rejecting the use of weapons and the military echoes of their grades. They were in charge of keeping order and performing multiple penological and administrative functions.¹⁹

The correctionalist program, shared by prison professionals and prison guards, suffered mostly from a lack of resources: too few prisons, workshops, technicians, personnel, as well as poor training, limited budgets, and overcrowding [33]. The Salvador Allende administration (1970–1973) provided an opportunity to finally turn these correctionalist visions for prison into reality; alternative sanctions and correctional procedures were still very limited in the late 1960s.²⁰ During his short tenure, Allende followed the advice of the correctionalist experts within prison. However, while prison officers and old professionals (lawyers, doctors and criminologist) within the prison bureaucracy [34, 61], where busy building prisons that would shape the “new man” of Chilean socialism ([61]:151), the distance between project and reality remained insurmountable. The objective limitations and poverty of the prison bureaucracies and bureaucrats contrasted with their subjective optimism in the early 1970. Still in the face of failure, reformers and politically designated managers formed a new “symbolic alliance”—where a variety of agents embraced a common program each for his or her own ends and allowing “programs to survive even if they seem abject failures” ([18]:21). This symbolic alliance

¹⁸ They were benefited a new general conception of the bureaucratic field, initiated in the 1930 oriented to regulate, and not merely repress, the mobilized working classes. The expansion of the state oriented to regulate the life of the masses through education, military service, hospitals, social workers and corrective institutions has produced a “new conception of administrative, political and legal practices, which would not operate on the dichotomy [of permission and prohibition] but in different ways: prohibition, permission, ordering, promotion and creation” ([25]:172).

¹⁹ Custodial functions are combined with “an overwhelming number of activities”, from keeping the number of inmates and surveillance, to “annotations in the prisoner dossier, as well as the personnel dossiers, and monthly reports to the movement in his prison, to be delivered to the zonal supervisor and the general director...who follow very closely and with great detail his activities” ([61]: 144–145).

²⁰ President Allende proposed in his platform “that the carceral system constituted one of its worst remoras and had to be transformed from the root to be able to regenerate and recover those who committed crimes” ([61]: 163).

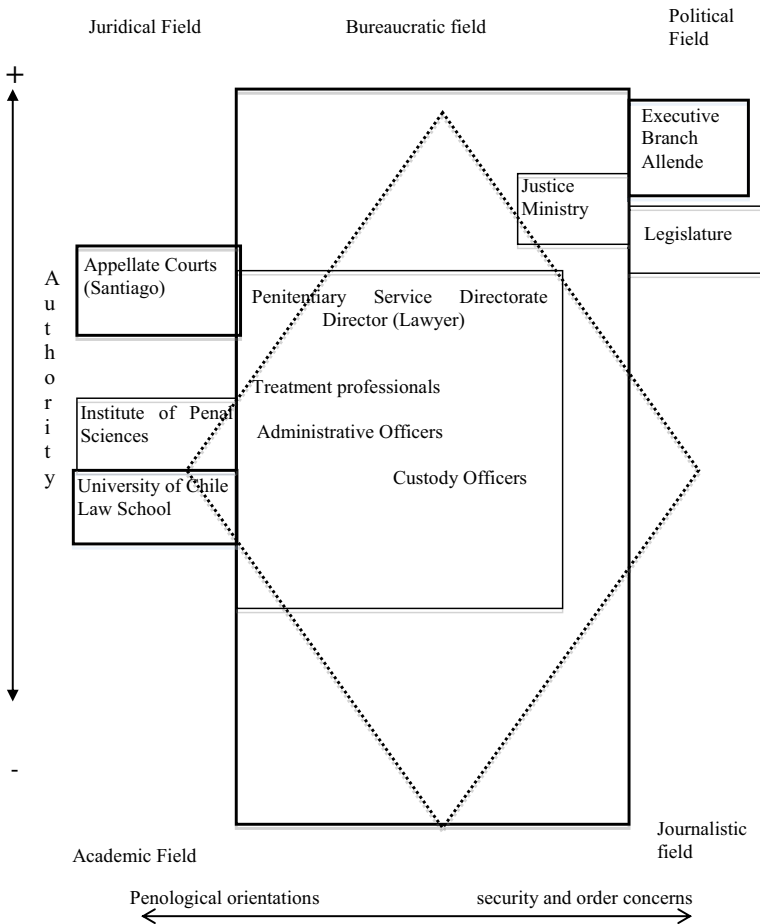


Fig. 4 Carceral field Chile, circa 1970

continued during the dictatorship, integrating unexpected new experts, the monetarist economists and managerial experts (Fig. 4).

Dictatorship and the carceral field: Militarization and the renewal of correctionalism and community alternatives by neo-conservative economists

In Chile, in contrast to Argentina, the prison was highly marginal in routine political repression during the dictatorship. At the same time the objective vulnerability of the prison administration to penetration by the executive branch, made it an easy target for the new civilian experts within the administration, the neoliberal economists. Very soon these experts exploited the gaps between previous plans and realities, and invested heavily in reinforcing and preserving the discourse of rehabilitation and the 1960s experiments in community sanctions.

Unlike that of Argentina, the Chilean prison administration was not central to the dictatorship’s projects of political repression. Army personnel directed the prison

administration and militarized the organizational culture and training of personnel, but at the same time the Army itself remained aloof from the prison, treating it as a “civilian” branch of the administration to the point that as early 1975, a criminal law scholar, Miguel Schweitzer, was appointed as Justice Minister.²¹ Still, the new organic law changed the prison administration from a “social service” into a “hierarchical, uniformed, disciplined and obedient institution,” though one that still “attends, guards and rehabilitates” detainees and convicts (ch. 2, Executive Decree 2859/1979). The new law reflected the advancement of the civilians sectors of the government formed by the neoliberal economists, the “Chicago Boys” that took control of the economy and parts of the state in the mid-1970s.

The “Chicago boys” had been gaining positions within the state since the beginning of dictatorship, implementing policies to change the economy, the state, and administration, with Pinochet’s backing. The advance was couched in economic theory and was executed by way of studies and the training of bureaucrats in the Planning Office (ODEPLAN).²² Just about at the same time that they were privatizing or “rationalizing” many welfare state services, the ODEPLAN team produced studies that described how to “modernize” the prison administration, along with a massive revamping of the criminal courts and prisons. Justice Minister Monica Madariaga [52], implemented the ODEPLAN program for prisons and courts between 1977 and 1982 (Gonzalez [36]:16). In 1978, the ODEPLAN team produced a long report with a cost-benefit analysis of “alternative solutions to the prison” [63] In 1979, when the government passed the new general statute for the Prison Service, *Gendarmeria*, it preserved rehabilitation, incorporated managerial capacities and know-how into the organization,²³ and expanded community alternatives. In line with the “principle of subsidiarity,” the organic law instituted community sanctions developed during the late 1960 and early 1970s to minimize costs, or in the reports’s words to “reduce the social-economic problems derived from custodial sanctions with non-institutional means, like parole and collaboration with the community and “semi-institutional means” like night or weekend prison” ([51]:143). They also preserved the rehabilitation logic based on individuals treatments because this would reduce the costs derived from recidivism (ibid. 140–143).

The ascent of both military officers unwilling to fully militarize the force and the preferences of economists for the long term cost-reduction aspects of rehabilitation preserved the position of correctionalist experts within the prison administration and the

²¹ When discussing the new General Organic Law for the Prison Service, Pinochet demanded that any military references be removed and that it be defined as a strictly civilian institution. According to his own words: “The Prison Service has the obligation to be in charge of those who had violated the law. Yet, here we find that it is being treated as a military institution. Military in the disciplinary sense, regarding the uniform, regarding hierarchy, but [prison] gendarmes are civilian employees that report to the local intendant. We cannot mix one with thing with the other.” ([45]:2)

²² Between 1974 and 1978, and prior to launching the grand privatization of health, education, pensions, and poverty-relief programs, ODEPLAN produced research on social policy (poverty, housing, health, education,) and economic issues (industrial and agricultural markets), which would later serve to frame and support the privatization of these state sectors ([79]:241).

²³ The new regulations divided the services into Technical and Management Under-directorates. The Technical Under-directorate had Readaptation, Community Sanctions, and Training departments, as well as a novel “Planning Department,” while the Administrative Under-directorate was placed in charge of Personnel, Security, Logistics, and Judicial Departments

centrality of the correctionalist perspective within the field. Moreover, given the low penetration of the military, many correctionalist experts from the 1960s remained in the administration into the late 1970s, and many community programs—minimum-security prisons, penal colonies for the family, weekend and week-days releases—continued after the coup as well (see in particular [35]).²⁴ Even the military party followed the perspective of the old correctionalist experts, continuing with the notions of “social defense” [45] and of rehabilitation and adaptation (Colonel [59]). The correctionalist experts, interested in finally fully implementing their programs, along with the economists in ODEPLAN and the Ministry of Justice, formed a new *symbolic alliance*. By the late 1980s, all relevant actors in the field believed they were finally advancing toward the modernization of prisons and punishments in Chile. They assured themselves of the reality of this “tale of progress” [18], pointing to buildings, community alternatives, and innovative treatment programs.²⁵ This tale of progress and modernization during dictatorship, however, had important limitations in practice. In the late 1980s it faced problems of overcrowding. The prison population went from 14,726 in 1980 to 25,250 in 1989. Overcrowding in the late 1980s and the expansion of prisons rendered treatment impossible (see Table 2).²⁶

Throughout the 17 years of military dictatorship few groups were expelled from the prison administration and few groups had profound objections toward it. The incoming democratic authorities did not reject the prison, criticizing it only for secondary aspects that could be solved with greater judicial control, or by investing in new prisons and expanding the treatment alternatives. As a result, just as the right-wing neoconservatives and managerial experts backed by economists saved the correctionalist prison from possible destruction or spoiling in the hands of the military during dictatorship—as was the case of Argentina—the center-left parties that took power after democratic transition preserved the expanded prison under democracy, continuing to work out the “modernization process” along the lines put in place by the neoliberal economists and their management experts in the late 1970s.

Prison evolution in democratic Chile: politicization, privatization and denial of failure

The transition to democracy renovated political authorities, as well as a portion of the experts and groups involved in the carceral field. The few new experts that entered the field advanced critiques couched in human rights views, but preserved and reinforced the consensus around a correctionalist prison. As political electoral dimensions became more salient in the early 2000, rehabilitation

²⁴ Still located in the core of the administration, old correction experts firmly believed in correctional treatment,—even questioning critiques to the correctionalist paradigm on the grounds that there have never been enough resources to actually implement adequate treatments in Chile—at the same time that provide strong evidence that decarceration and community control produced less recidivism ([35]:251).

²⁵ In 1987, the government continued building the different categories of building according to “Methodology for identifying and prioritizing investment project in carceral infrastructure” [53].

²⁶ A social worker serving in the model prison of Colina in 1985 remembers that “after working with the Integrated Treatment System in the model prison, in the late 1980s I went to [the provincial prison of] Rancagua, where I had to assist 900 inmates, of course, what can I do in those conditions” (Interview Winka Letelier, August 2009). Treatment became impossible and secondary. In 1989 there were 79 social workers and 12 psychologists for 25,000 inmates.

concerns became subordinated to security concerns, and the correctionalist programs were gradually abandoned in favor of prison building and privatization and denial of abuses and violations of human rights.

After transition the main changes in the field were the light investment of human rights groups and the reconversion of economists, from their bureaucratic positions during dictatorship into right-wing think-tanks outside the state. President Aylwin, inherited a dominant position within the field based on the executive branch control of the budget and nomination of the upper echelons of the prison bureaucracy and did not invest many political resources in order to gain control, nor did it devise any grand reform program (as it did in the police and courts, see [37, 38]). Its policy consisted mainly in “provid[ing] more resources to the prison administration” [5] and to “humanize the carceral system in order to be able to rehabilitate inmates and improve the functioning of detention centers,” ([6]:15–16). The focus on “humanizing” prison reflected the initial investment of human rights activists and legal scholars.

The human rights’ groups were formed by legal scholars working on criminal procedure reform at Diego Portales Law School, and the Chilean Commission of Human Rights (CHCHR). The “Portales Boys”, in the early 1990s formed a “Criminal Policy Association” led by Juan Bustos Ramirez, a returning exile criminal law scholar and criminologist, and by Jorge Mera, a human rights scholar; they were assisted by a young Cristian Riego and Juan Enrique Vargas,. The association put the issue of human rights at the center of discussions over prisons and “crime policy that would respect human rights” ([3]:9). They deployed a mix of empirical analysis, critical criminology, and human rights critiques.²⁷ The other human rights, the Chilean Commission of Human Rights, tried to advance within the prison arena, drawing on their long experience with human rights activism during the dictatorship. CHCHR proposed revising “from the perspective of human rights, the bases of the punitive activity of the state” ([14]:xiii) and put forward similar ideas to those of Portales group.²⁸ These proposals were in turn fully endorsed by right-wing think-tanks, the other new agents in the field. These think tanks were not new actually. They were old agents in new garbs.

The think-tanks created by the right-wing groups *Fundación Paz Ciudadana* (FPC) and the *Instituto de Libertad y Desarrollo* (LyD), also became core players regarding prison policy. At FPC, liberal economists continued promoting reintegration and limited spending while embracing the privatization of prisons or services [26]. LyD and UDI, the party formed by conservative *Chicago Boys* after the transition and led by Joaquin Lavín, also favored privatizing prisons ([46]:145). These groups allied themselves with economist who migrated to *Universidad Católica* Economics Department [27].

By the end of the first democratic administration, the basic belief in a correctionalist prison remained central to the symbolic order of the field, endorsed also by criminologists and correctionalist professionals in the prison administration, in the government offices, human rights groups and economists in think-tanks. Still, human rights activists and legal

²⁷ They proposed decriminalization of victimless crimes, decarceration, flexible sanctions, protecting the rights of inmates, professionalizing personnel, judicial control of prisons, participation of experts within planning activities, and criminal procedure reforms [4].

²⁸ They criticized prison conditions, pushed for decarceration, agreed on the need to follow alternative community sanctions, and reduced pre-trial detention length by making use of a speedier oral trial ([14]; [70]).

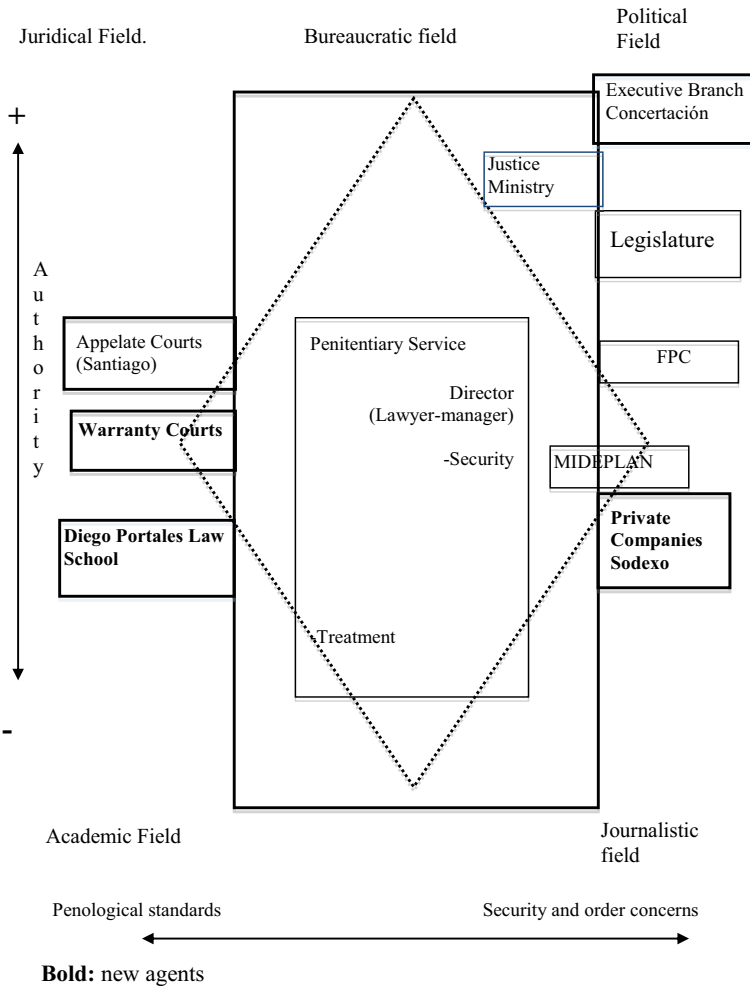


Fig. 5 Chilean carceral field, circa 2005

scholars, made limited investment in the carceral arena, privileging the criminal procedure reform. Economists from the think-tanks kept investing, and proposed to continue with corrections and rehabilitation while calling for the privatization of prisons (Fig. 5).

During President Frei’s administration (1994–2000), political interests progressively eroded the correctionalist programs privileging security. The concern for security, made correctionalist-rehabilitation oriented professionals lose power, and gave power to the economists, who both favored programs of privatization and steeped the new prison officers into management. The central government and the ministers projected their biases onto the field, privileging political-electoral interests, and taking a more punitive stance. The electoral game began to weigh more heavily within the structurally ambivalent position of the justice minister. In the trade-off “between administrative rationality and political advantage,” [32] Justice Minister, Soledad Alvear (1994–1999), followed the second in the name of the first. The “grand modernization of justice” became increasingly the most important prison policy—it was expected that it

would reduce the prison population by diminishing prisoners on remand, increase the proportion of convicts allowed treatment, and ensure judicial control over detentions and custodial sentences. None of these turned true. Instead the political interest for security became hegemonic.

Directors devoted their energies to produce secure prisons and adapting the services to the demands of the judicial reform ([13]:20–24). By the late 1990s, the correctionalist experts within prisons, while enthusiastically developing new treatment programs, lost their voice within the carceral field. Between 1994 and 2000, the government—besides building more prisons and hiring more guards—expanded treatment models in line with the economic view of the experts in FPC.²⁹ However, these labor-training programs within prison did not prosper; as the prison population increased, rehabilitation concerns were again put aside.³⁰ Instead, they became subject to the demands of the executive branch and their programs became impossible to implement as the population ballooned.

By the early 2000s, the replacement of Prison Directors and the arrival of President Riardo Lagos, an economist himself, and the politicization and overpopulation of prisons allowed the central government to impose the market-friendly policies of prison privatization. With the election of Ricardo Lagos as president in 1999, the highly pragmatic Party for Democracy (Partido por la Democracia) took control of the prison administration and imposed his own pragmatist style following the ideas of economists at FPC ([68]:92). Lagos presented himself as a technocrat, emphasizing his credentials as an Economist with a PhD from Duke University, and assuming the neo-conservative punitive discourse of his main opponent in the 1999 presidential campaign, Chicago boy Lavin. In the early 2000s, the privatizing orientation of FPC converged with Lagos' focus on infrastructure. President Lagos had given concession on building and maintaining freeways during the 1990s [81], and politically capitalized on his image as a “doer.” Lagos and his team in the Ministry of Public Works espoused economic and financial reasons that trumped previous objections to the idea of making a profit out of imprisonment grounded in historical and ethical reasons.³¹

A sudden prison crisis³² and the alleged need to satisfy the demands of the “grand reform” of the criminal justice system allowed private businesses to acquire a share in the business of punishment. The government opted for going “the French way,” in

²⁹ In early 1994, the correctionalist professionals in prison launched the “New Penitentiary Treatment Model,” planning to provide psychological assistance, education, and training to different groups of inmates, according to the length of their sentence. This program the vision of the “productive prison” focused on rehabilitation through “real world type labor” programs designed by Fundación Paz Ciudadana (Fundación Paz Ciudadana and Instituto Libertad y Desarrollo, [30]).

³⁰ The program had limited material impact—in 2000 it involved only 3 % of inmates (Fundación Paz Ciudadana, [31]). The community sanctions programs did not develop much either.

³¹ In the mid-1990, Minister Alvear appeared open to study privatization (Alvear [2]:14), but the Prison Director considered it against the “culture of the public administration of being in charge of prisons” ([49]:54) and the rehabilitation professionals questioned the idea, of “making private profit from incarceration” [62].

³² Three weeks after the first massive protest in prisons in Chile, where 11,000 inmates out the total 31,000 protested for the death of seven inmates in a prison fire, the Justice and Public Works ministers announced the program of building prisons for 16,000 inmates and putting them in the hand of private companies (El Mercurio 1/14/2001), which was already decided in late 1999, right after Lagos won the election.

privatizing prisons⁷³³ retaining security and supervision of prisons and contracting out building and operations, as well as provision of food, laundry, medical and rehabilitation “services.” Privatization agreements put rehabilitation at the center of the privatized prisons, oriented towards labor programs, and inmates were hired by private companies and provided psychological assistance and evaluation. Former treatment personnel (psychologists, social workers) became supervisors of private contractors providing “rehabilitation services.”

In the process of privatization high officers and state managers replaced correctionalist expertise with managerial skills. Higher-level officers—competing for higher commanding positions—received costly training in public management and concessions. The main objective of prison-building was to “reduce overpopulation, establish service standards, improve security conditions, and improve the public image of the service; reinsertion, was something for the future,” (Interview Marcos Lizana, Chief-Legal Advisor of Gendarmeria, July 2009). Prison officers preserved part of their power. In particular officers retained control of security, while upper-echelon officers and high-level bureaucrats become “managers” of the prison service. For them, the privatization of prisons also meant the opportunity for a younger generation of officers to “professionalize” themselves, both in “Project evaluation” and in New Public Management” expertise (Fig. 6).³⁴

Between 2000 and 2007, the prison population rose from 33,600 to 43,600. Within private prisons, housing 20 % of those condemned, overcrowding has been reduced and there is a greater regimentation in the relations between guards and prisoners. At the same time, overcrowding and violence continued in the public prisons, and the promises of rehabilitation and community diversion were abandoned, or at least suspended. In the face of increased violence, killing, abuse, deaths, and misery within the hyper-modern “Maximum and High Security” public prisons, human rights’ activists attempted a comeback to the field. Here, in contrast to what took place in Argentina, the human rights groups and scholar have been systematically rejected from the field. The human rights policy of Concertación and indeed of the political arch has been a politics of denial in the face of accusations of inmates’ human rights being systematically violated in prisons.

In the late 1990s, older professors at the Diego Portales Law School, who had not collaborated with the criminal procedure reform (like Jorge Mera), and younger ones, who came after the generation of Vargas and Riego, once again aimed their human rights guns at the prison, in an attempt to increase the judicial supervision of prisons. In 2000, once the criminal procedure reform was launched, professors at Diego Portales Law School began producing annual reports on human rights abuses under democracy, and one of the areas targeted were prisons.³⁵ The Human Rights Center at Portales got

³³ The “French system” was the French adaptation of the US system of total privatization modified by the carceral field of France, where the French administration and the penitentiary officers’ unions resisted total privatization ([62]: 80–81). Similar conditions operated in the Chilean case but with the difference that within the “brave Chilean model” [8] private contractors take everything except custody.

³⁴ The directors of those modern private prisons have steeped themselves in public management expertise. In 2009 director Jimenez Mardones, between 2007 and 2010 was lawyer specialist in “Social Management and Public Policies” and “Criminal Procedure Reform” (Ramirez Barrera [67]:245).

³⁵ Their 2002 Report showed overcrowding, lack of hygiene, insufficient food, prisons controlled by inmates, with high level of violence, deaths, and a highly tense order produced by the collaboration between abusive and exploitative gangs and despotic guards. The report also denounces systematic torture and physical abuses [15]

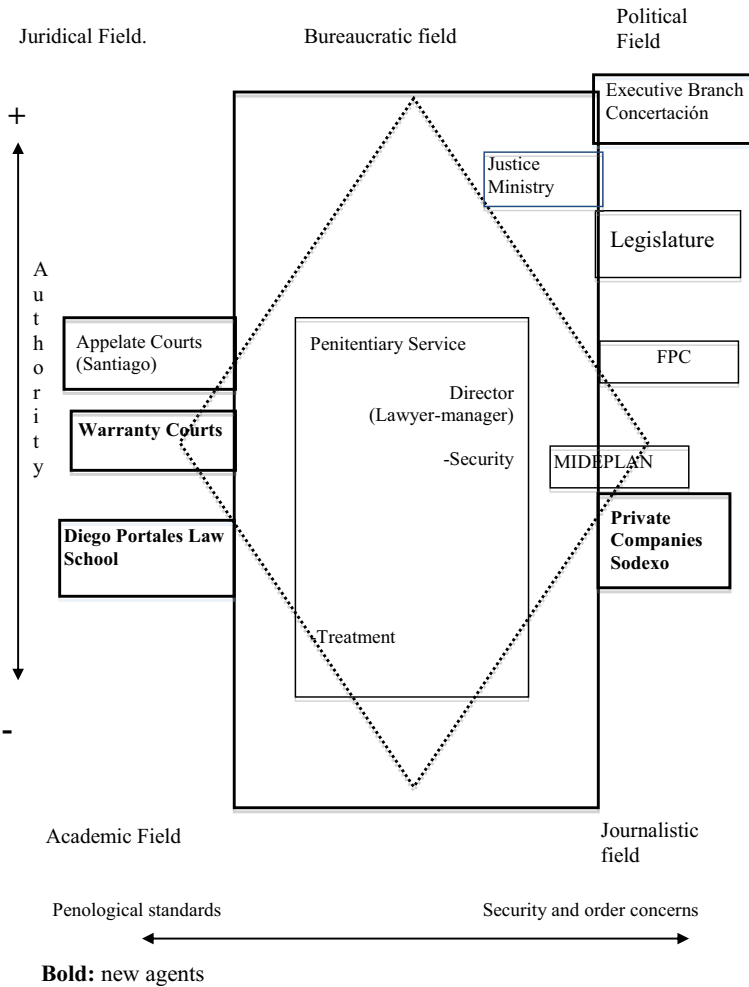


Fig. 6 Chilean carceral field, circa 2005

connected with other human rights groups: the older CODEPU (Corporación para la Defensa de los Derechos del Pueblo), created in 1980 and tasked with the defense of prisoners, and the new CONFRAPECO (Confraternidad de Familiares y Amigos de Presos Comunes), an organization of ex-convicts mobilizing under the banner of human rights.

If human rights activists were taken seriously in the early 1990s—with new training courses available for guards—in the early 2000s they were at first rejected, and then managed by the politically appointed officers and the administrative elites in charge of the prison administration. Following a managerial approach, top-down prison bureaucrats tried to reduce the problems of violence, killings, and overcrowding to a problem of public relations and public image. Between 2002 and 2007, the Justice Ministry systematically denied the validity of the reports describing the terrible prison conditions [40, 41]. At the same

time, they hired their own teams of local and foreign legal experts to show they “were working” on the problem.³⁶ Only when the Inter-American Commission of Human Rights came to Chile and reported on the violence, abuse, inadequate facilities, and lack of rehabilitation services [69] did the Prison Service Directorate recognize that prison conditions were sub-standard and that they violated human rights. Still, the government limited itself to recognize in 2009 “that there was a crisis,” and called a special commission to study problems and propose solutions, a commission that was pompously named the “Council for a New Penitentiary Policy.” The Council delivered the 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 [20]. The right-wing candidate, millionaire Sebastián Piñera won the election in 2010, and the report was duly archived after his inauguration. By 2010, the prison conditions highlighted by the human rights report in the mid-2000s became entrenched, with public prisons worsening.³⁷

Here, it was not the volatility of the political system that prevented the full return of rehabilitation and conditioned implementation of human rights standards. On the contrary: Center-left parties were converted to the dogma of management and punishment, a position legitimated by the modern criminal-procedure reform and the advent of privately run prisons, a trend that expelled and limited old experts and human rights activists who were interested in rehabilitation. As a result the “managers” in the prison administration worked hard to deny, cover, and minimize the brutal conditions of Chilean prisons. Recurrent prison violence and catastrophes continued reminding the public and authorities that such tactic was not enough to solve the pressing prison problems.³⁸

Prison policies and the carceral field: mediating punitive turns and national sources of international human rights strategies

From this study we can conclude that the contemporary carceral systems of Argentina and Chile are not simply continuous with weakly bureaucratized penal states that increased their informality and violence after the neoliberal turn [57]. The prison goals and regimes underwent important changes in Argentina and Chile since the 1960s—

³⁶ The Ministry hired its own human rights specialists and sociolegal scholars from Germany with the assistance of the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), with the explicit aim of assisting the Ministry of Justice in regulating judicial oversights of prisons [24]. After 2 years of work, and after receiving the collaboration of legal scholars for Universidad Diego Portales and Universidad de Chile, the minister decided to abandon the projected in 2007 and replace it with a study of a smaller plan to create a supervising judged.

³⁷ In 2010 20 % of the 52,000 inmates were serving in private prisons, with 48 % of excess inmates, while those run by the state had an excess of 33 %. While in the public ones had high levels of violence, in private ones there suicides have begun to increase. In 2010 around 13,000 inmates received basic and secondary education around (25 %), and 16,000 (30 %) worked, even if mostly in providing services to the administration or the guards or in art crafts.

³⁸ On December 8th 2010, 81 inmates died in a fire at the San Miguel Penitentiary Complex. The complex, designed to house 1100 was housing 1964 at the time, and only 30 guards controlled them. The guards, of course, were rapidly accused by the efficient courts system.

from rehabilitation to counterinsurgency goals and internal order in the 1970s—, continued evolving towards rehabilitation and corrections in 1980s and 1990s, getting combined with security priorities in the 2000s. Both the revival of correctionalism through the differential incorporation of human rights and managerialism and their relative demise in each case can be accounted for if we take into account the history of the carceral field and the strategies and struggles of agents located within it. These patterns are difficult to account for by resorting to the alternative neo-marxist, Late-modern and Foucaultian approaches discussed before.

Moreover, while both cases end up following a “particularly punitive model” that accompanied economic globalization and the turn to neoliberalism in Latin America [43], such punitivism is very different in each case and follows very different paths. Even within the common turn to neoliberalism, and to transitions to democracy, the structure of relations of the carceral field mediated both the preservation and renewal of prison ideologies as well as the drive toward punitivism. In Argentina, even if the economy began to liberalized in the 1970s, and was fully opened in the 1990s, imprisonment remained low, and political agents adopted decarcerating policies between 1983 and 2000. The field’s doxa toward decarceration and rehabilitation renewed after dictatorship and the interests of the democratic era executive branch to reduce conflicts within prisons (fuelled by the politicization of inmates through their contact with political prisoners during dictatorship) converged to foster policies that reduced the use of imprisonment and to increase rehabilitation programs and the protection of inmates human rights in the first two decades of democracy. In Chile, the structure of the bureaucratic field, in particular the limited colonization by military officers and the entrance of neoliberal economists during dictatorship permitted the continuity of the discourse of rehabilitation throughout dictatorship, while the reduced use of the prison in political repression produced in turn low levels of politicization of inmates after the return of democracy and until the late 1990s. Both elements secured the legitimacy of the prison in democratic times. The new doxa, organized around correction and efficiency, during the 1980s, facilitated first, the positive reception of the criminal justice reform projects of the 1990s that would reduce the proportion of pretrial detainees and allow for the provision of rehabilitative treatment within prison for those effectively sentenced [37]. Second, after the new criminal procedure, through its fast-track sentencing, flooded the prisons once more in the 2000s, it made acceptable the massive investments in prison building that paralleled the implementation of the criminal procedure reform, and indeed the privatization of prison services.

The analysis of the dynamics within the carceral field also sheds light on the timing of the recent turns toward punitive policies and on the rhythm of prison population expansion. In both cases, the role that prisons had in political repression during dictatorship—determined by the structure of relations within the larger bureaucratic field, in particular in the relations between military and penitentiary elites—was critical to understand the timing of the turn toward hyper-punitivism in democratic and neoliberal Argentina and Chile in the 2000s. In Argentina where repression involved the police, the armed forces and the prisons, in democratic times, both the police and the prisons were highly illegitimate. This illegitimacy, along with the enormous “prison turmoil” (Irwin [42]) experienced within prisons in the 1980s and 1990s, explains in part the orientation of democratic authorities toward trying to reduce its use. Both the dictatorship-era politicization of common criminals and their cultures, and the easy

entering of academics providing university education to inmates (the University Center Devoto) further facilitated the questioning of prison officers authority and inmates' rebelliousness. In Chile, the reduced role of the prison administration in political repression during dictatorship (compared with that of the police, army and intelligence bodies like the National Intelligence Commission [CNI]) was directly connected to the early and continuous rise in the use of the prison after dictatorship by democratic authorities. Prisons became more despotic during dictatorship but prisoners became more docile, and not more combative after dictatorship as in Argentina. As a result prisons were quiet, and authorities concentrated themselves in building new prisons to finally make possible the rehabilitation programs in democratic times.

This notion of carceral field, allows us to understand both the paradoxical, even if weak and short lived, revival of rehabilitative correctionalism, as well as to explain the irregular advance of human rights as a new rationale for governing prisons. Other authors have pointed out to the relevance of state recognition and commitment to ensure the protection of human rights within prisons, in particular international mechanisms and of national organs [82]. As this work shows, the structure of the national carceral field appears to be determinant of the reception and efficacy of those international norms to regulate prisons, but also for the consolidation of international instances that favor their incorporation in national arenas and institutions. The failure and weakness of human rights' activists at the national level, as in Chile, appears to be a critical factor propelling international strategies mobilizing international courts or bodies. Indeed, not only the empowerment of human rights' activists in Argentina during the 1990s, but also the limited access of Chilean human rights activists to the state, have both, contributed to the creation and reinforcement in 2004 of the Interamerican Commission on Human Rights "Rapporteur on the Rights of Persons Deprived of Liberty." As this process shows, we need to expand the analysis to this international strategies within each national field analyzing the co-constitution or co-determination of national and international processes that determine the advance and conditioning of new prison rationalities. The notion of carceral field provides an unequal tool to capture those processes.

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