Paul Hathazy

Punitivism with a human face: criminal justice reformers' international and regional strategies and penal-state making in Argentina, Chile and beyond

Punitivität mit einem menschlichen Anstrich: Die internationalen und regionalen Strategien von Rechtsreformern und die Verbreitung des strafenden Staates in Argentinien, Chile und anderswo

In this paper I study the regional import-export strategies of Latin American criminal justice reformers and the emergence of a regional hub of reform expertise. Analyzing these regional processes – sidelined by most studies, focusing on central-country to periphery-country north-south circulations – I account for the contents and implementation-designs of the criminal procedure reforms in the last two decades in many Latin American states, increasing their punitive capacities and legitimacy. I dissect the Argentine and Chilean reform processes in the 1980s and 1990s, situated at the core of these regional dynamics. Locating these regional processes within historical transatlantic and continental circuits of penal expertise I show that these strategies and institutions result from struggles within national criminal justice fields and from reformers exporting their fights regionally to regain power at home or to dispute it to core-countries' agents.

Keywords: Criminal Justice – Reform – Experts – International Strategies – Juridical field – Argentina – Chile – Latin America

In diesem Aufsatz erkläre ich die regionalen Import- und Exportstrategien lateinamerikanischer Rechtsreformer und die Entstehung eines regionalen Reformkompetenzzentrums. Mit der Untersuchung dieser regionalen Prozesse – die von den meisten Studien unberücksichtigt gelassen werden, da diese sich auf Nord-Süd-Bewegungen von zentralen Ländern zu peripheren Ländern konzentrieren – erläutere ich die Inhalte und Umsetzungskonzepte der Strafprozessreformen der letzten zwei Jahrzehnte in vielen lateinamerikanischen Staaten, durch welche ihr Bestrafungsvermögen und ihre -legitimität zugenommen hat. Hierbei analysiere ich die argentinischen und chilenischen Strafprozessreformen der 1980er und 1990er Jahre, die den Kern dieser regionalen Dynamiken bilden. Mit der Einordnung dieser regionalen Strategien und Institutionen in historische transatlantische und kontinentale Strafrechtskompetenzkreise argumentiere ich, dass sie sich aus Streitigkeiten innerhalb der Strafjustizfelder der einzelnen Länder ergeben, sowie daraus, dass Reformer ihre Auseinandersetzungen in die Region exportieren, um im jeweiligen Heimatland Stärke wiederzuerlangen oder die Macht der Handelnden in den zentralen Ländern anzufechten.

Schlüsselwörter: Strafrecht – Reform – Experten – Internationale Strategien – Juridisches Feld – Argentinien – Chile – Lateinamerika

Introduction: From international center-periphery diffusion to national fields and regional experts' international strategies

General models of the transnational dimensions of policy changes – be them idealist institutional perspectives (Meyer et al. 1997) or materialistic-structural approaches (Badie 2000) – focus on country to country exchanges between center and periphery states or national groups (see Dobbin et al. 2007). Studies of penal policy diffusion in Latin America (Huggins 1998; Salvatore and Aguirre 1996; Wacquant 1999) are no exception. This paper advances our understanding of the internationalization of penal state making in Latin America focusing on agents and positions operating at a regional level, connected to the global market of state governance expertise (Dezalay/Garth 2011) but part of national penal arenas, and producing novel effects from within their regional positions and strategies.

Following historians and legal scholars that began analyzing regional agents and processes of policy diffusion (Galeano 2009; Langer 2007) I trace the criminal procedure reform models and implementation plans adopted in Latin American states since the early 1990s back to their national origins and international strategies of a network of reformers. These agents from the Latin American states, in collaboration with North American and European aid and resources, have crucially intervened to change criminal procedure towards an accusatorial system in a number of countries since then.[1] The accusatorial code and implementation plan proposed and adopted in the regions combines a number of foreign expertise – German criminal procedure designs and doctrine, US prosecuting and courts management models, development economic analysis – that result, I posit, from previous importations and hybridizations by reformers fighting their own struggles in national arenas.

I extend back to the national arenas Langer's reconstruction of the formation and evolution since the 1980s of the Latin American network of activists experts that promoted and intervened in reforming a number of criminal courts systems, in what he defines a "diffusion from the periphery" where "actors in peripheral countries articulate and have a crucial role in the diffusion of rules, norms and policies to other central or peripheral countries" (2007: 624). This diffusion includes *horizontal or semi-horizontal diffusion* ("form periphery to periphery countries without central states agents") and *triangular diffusion from the periphery* (where besides actors from peripheral countries "actors from central countries play a crucial roles in the process of

1 Argentina adopted an accusatorial code in the Federal system in 1991, Guatemala adopted it right after the Argentine one in 1992, Costa Rica in 1996, El Salvador in 1997, Venezuela and Paraguay in 1998, Bolivia and Honduras in 1999, Chile in 2000, followed by Peru in 2004, Colombia in 2006, and in Mexico, the state of Oaxaca and Chihuahua did it in 2006 (Langer 2007: 631).

diffusion […] bring […] their advocacy, pressures and resources to other peripheral or semi-peripheral countries to advance reforms" [2007: 625f]). Within this regional network legal scholars from Cordoba, Argentina, occupied the main positions between the 1970s to 1980s, were replaced by scholars from the *Universidad de Buenos Aires* Law School and, in the 1990s, by Chilean legal scholars, located at the *Universidad Diego Portales* directing the *Justice Studies Center of the Americas* (JSCA), in Santiago de Chile since the 2000s.

With Langer I question explanations of criminal procedure reform based on North-South emulation, coercion or elite interests preferences where foreign Northern state agencies impose models on national Latin American judiciaries to better criminal courts and prosecutions abroad (Andreas/Nadelmann 2006) or refer to neoliberal hegemonic processes of legal and economic globalization directed from the North (Rodriguez 2001; Santos 2001). I posit that the periphery state agents' role cannot be reduced to mere transmission belts of North-South impositions or copies, nor their role limited to translators. In this work I analyze the emergence and consolidation of the core positions within the regional network responsible of recent penal state re-building through court reform in the region but anchor such regional processes in the histories of struggles in national juridical fields, namely, those of Argentina and Chile. I argue that struggles and paths of internationalization within those national fields account for (i) the original formation and restructuring of the core positions within that regional network, (ii) for the specific contents of the regional criminal procedure code and implementation plans proposed and followed, and (iii) for the creation of the JSCA and its symbolic efficacy.

Connecting the regional process with national struggles and strategies fills critical heuristic voids of the *diffusion from the periphery* model. First, the Bourdieusian field-theory based analysis questions the idealistic view of reformers' actions and regional strategies as "experts and advocacy network members […] distinguishable largely by the centrality of principled ideas or values in motivating their formation" (Langer 2007: 652). Instead, I account for the regional network-making as continuations of their interested struggles in national criminal justice fields, that is, as part of reform experts' exporting-importing strategies to fight their own national struggles where "different competing fractions tend to utilize the societies at the periphery as laboratories in order to demonstrate the relevance of models, (…) that they seek to promote in their home societies" (Dezalay/Garth 2011: 279). In my analysis, however, the relevant national arenas of struggles, are not national fields of power, as in Dezalay and Garth (2011), but national criminal courts fields (discussed below). Second, the focus on national arenas explains reforms in Argentina, where the regional network actually emerged from the export strategies of local reformers. Third, the analysis reveals that even in cases considered of horizontal diffusion – without central states agents intervening, i.e. Argentina, Chile or Costa Rica in the 1990s –, all rest on previously built international contacts and sources of legitimacy from the global North. This

demands analyzing the prior process of importation from the center, deployment in local struggles and the regional re-exportation strategies. Finally, the focus on national struggles reveals the presence of other professionals and expertise besides legal ones, namely economists involved as reformers, thus explaining the specific *mix* of the regionally diffused criminal reform plans that included, in the 1990s, besides code writing, organizational analysis and project evaluations. I analyze the reform processes of Argentina and Chile and their regional projection based on secondary bibliography, documents collected and in-depth interviews with main participants produced in fieldwork done between 2009 and 2012 in Buenos Aires and Santiago.

The rise and regional projection of the Argentine legal scholar-reformers

The social spaces in which reformers arose and reform proposals were struggled upon, are what I call national *criminal courts fields*, that is, the delimited space of relations located at the intersection of the national juridical field, the penal sector of the bureaucratic field and the political field, where agents possessing mainly juridical, bureaucratic and/or political capitals vie for the authority to determine national criminal courts' roles, policies, and priorities.[2] The struggles within these spaces propel both court reform and the importation and exportation of judicial governing expertise. Entrance and participation in such space also contribute to shape the socially constituted systems of structured dispositions (habitus) of reform experts which act as a mechanism calling for reform in specific directions and deploying specific capitals, that is, differentially distributed and efficient resources able to mark hierarchies and secure rewards in certain systems of relations. These capitals, include, not just cultural-juridical capital, more or less internationalized, and progressively economic cultural capital, in the form of degrees and managerial know-how, but also social capital of networks, in particular with foreign agents and national political agents. From this perspective a primary cause for the emergence of demands for judicial reform are *strategies* of national professional expert-entrepreneurs that challenged the existing criminal procedure codes and the workings of the justice administration in order to make a new position for themselves in the local juridical fields. These strategies con-

2 Within the criminal courts field we find agents primarily located within the juridical field, that is a "site of a competition for the monopoly over the right to determine the law" (Bourdieu 1987: 817) based on the "recognized capacity to *interpret* a corpus of texts sanctifying a correct or legitimate vision of the social world" (Bourdieu 1987: 818). We find also judges, prosecutors, and public defense lawyers that are part of the juridical field, but they deploy their juridical capitals as they are part of the penal sector of the bureaucratic field monopolizing the public authority to investigate and adjudicate penal cases. We find, finally, the central government and political agents, academics, and the professions and the journalistic agents.

stitute *reconversion strategies of legal scholars or other professionals, like economists, from the academic or expert sector of the national juridical fields* deploying their social and (varied) cultural capitals in the *political sector* of the national criminal courts field. The actual implementation of their reforms have always depended on the convergence of their strategies with those of political agents (the central government and legislature) interested in court change.

Dezalay and Garth (1998a, 1998b) trace the recent criminal court reform process in post-authoritarian Argentina back to strategies of human rights scholars close to the incoming elected president Alfonsin (1983-1989). I discovered that those human rights scholars in the 1980s in Argentina were continuing and revitalizing an older position of the juridical field, that of the *criminal procedure code-writer-reformer,* which has emerged in the 1940s, revived by new generations of newcomers to the juridical field since then. This position has always involved international strategies, both of importation and exportation, but has been very weak at previous stages of the field, in particular regarding changes in the Argentine federal justice system.[3]

This "code-writer-reformer" position emerged in the 1940s in the process of the Argentine Córdoba province criminal procedure code reform of 1939 that signaled the beginning of the contemporary "revolution from the south" (Langer 2007) toward accusatorial modes and managerially rationalized courts in Latin America (see Duce and Pérez Perdomo 2003; Langer 2007). In writing the code, *Alfredo Velez Mariconde* and *Sebastian Soler* – law professors at the *Universidad Nacional de Córdoba* – instituted within the provincial juridical field the figure of the "author" of criminal procedure codes. This position meant a local symbolic revolution (Bourdieu 1996: 84-92) based on being an "impossible possible" combining the opposite possibilities of the juridical field (Bourdieu 1987): that of the pure theoretician of the law, and that of the experienced practitioner savvy of the political and judicial terrain that acts as a legislator. This position, which certainly had South American, European and US precedents, had a strong politico-ideological content as a refuge for political liberalism, threatened by the advance of fascism and authoritarianism in the 1930s, and always involved the backing of political agents, in that case the liberal provincial governor fighting conservative parties in the provincial judicial field (Hathazy 2013a: 122). Since its beginning this position was also built on and defined by international contents fed and warranted by mainly European legal ideas and institutions – elements and circuits that continue today, combined progressively with US-based legal tools and standards.

3 Legal scholars proposed changing the inquisitorial criminal procedure with an adversarial code in the Federal government of Argentina in 1943 (Langer 2007), 1948 (Herrera 1948) 1960, 1968 and 1970 (Alcalá y Zamora 1972).

Having few social and family connections to the provincial legal world of Córdoba, *Soler* – a Spanish immigrant himself – invested in the 1920s in a highly profitable scholarly capital, German techniques for the analysis of criminal law. Through Spanish exile and criminal law professor *Luis Jimenez de Asua* – himself a scholar-politician who met Austro-Hungarian *Franz von Liszt*, also a scholar-politician, in Berlin in the 1910s – *Soler* imported techniques of "systematic construction of the German Penal law – one of the main [German] exportation products during the XXth century," and deployed it against a medical positivist approach hegemonic within criminal law doctrines [that] "had de-juridified penal science" (Cesano 2011: 76). These legal techniques propelled "the scientific hurricane from Córdoba, based on the new German penal science" (Cesano 2011: 78). The "science of criminal procedure" became a new branch in law schools, as a specialty that combined political philosophy, empirical knowledge of comparative law, foreign languages, dogmatic systematizing skills, and rudimentary legislative skills. It mixed grand political principles with a pragmatic orientation towards adapting them to political conditions. As self-appointed guardians and carriers of legal liberal modernism, *Velez Mariconde* exported his expertise as "author" of new codes to other provincial courts (Santiago del Estero 1941, Mendoza 1952, Corrientes 1966 and Cordoba 1968) and the Federal courts (1943, 1960 and 1968). Him and his followers, would work for the Peronist administrations in the 1950s, for center democratic regimes in the early 1960s, and for corporatist military regimes in the late 1960s. Still, lacking consistent political backing that would allow projects to turn into law, the Cordoba school began investing beyond the Argentina frontiers. It received a study mission from Chile in 1964 (see below) and in 1965 sent one of its younger members, *Julio Maier*, to study in Germany. In 1967, through contacts with another Spanish exile, *Niceto Alcalá y Zamora*, who created the *Iberoamerican Institute of Procedural Law*, *Velez Mariconde* was requested to "elaborate the political bases of a model criminal procedure code" for Latin America (Fairén Guillen 1985: 98), and by 1972, he authored a code for Costa Rica (Hathazy 2013a: 113-115).

Later generations of activist-scholars revived this political-academic position to launch new rounds of reforms, presenting themselves as neutral scholars in times of political peril, and as principled scholar-activists in times of political openings. The duality of the position served to accumulate and reconvert each occupant's academic-juridical capital into political or bureaucratic (judicial) capital, and vice-versa. In this logic, authoring new codes or, even better, getting those codes into law, became the hallmark of prestige, convertible in academic or judicial posts or both.

Between the 1950s and 1980s *Ricardo Levene Jr.* from Buenos Aires and *Julio Maier* from Córdoba – from the two major poles of juridical sciences in Argentina – disputed the inheritance to the position of code-writer-reformer from *Velez Mariconde* and *Soler*. While both continued to base their local power on international contacts and alliances with local political figures,

Levene invested more heavily in political contacts, while Maier privileged acquiring both local and international academic capital. *Ricardo Levene (Jr.)* (1914-2004) – son of a legal historian – after flirting with positivist criminology and German eugenics in his twenties, he declared himself a follower of *Velez Mariconde* (Levene 1945), imported the Cordoba doctrines to the *Buenos Aires Law School*, and contacted Italian and Spanish criminal procedure scholars. He also authored codes for the provinces of La Pampa (1964), Corrientes (1971), and Chaco (1971), and projected one for the federal courts in 1949.

While *Levene* was shuttling between the academy and the federal justice system in the 1960s and 1970s thanks to his strong ties with the Peronist Party, *Julio B. Maier*, from Córdoba, became the most recognized heir of *Velez Mariconde*, through a second importation of German legal tools, including now laws and doctrine, and not mere techniques. He arrived to study in Germany in 1965 just after the "little penal procedure reform" of 1964 had been passed. The reform resulted from 20 years of struggle of legal scholars, judges and politicians in Germany against the Nazi contents of the German legislation granting more power to the defendant (and his attorney) against the state (Mueller 1966: 345). After becoming a Federal Judge in Buenos Aires and professor at the *Buenos Aires University Law School*, replicating the German struggle in the authoritarian regime of Argentina's 1960s and 70s, he wrote a dissertation comparing the Cordoba Province and Federal criminal procedure codes with the German Criminal Procedure Ordinance of 1964 (Maier 1974). Exiled in 1976, after protecting Chilean dissidents escaping Pinochet – including legal scholar Juan Bustos – he went to Germany with a Von Humboldt Fellowship returning to the justice service in the late years of the dictatorship. In 1978 another member of the Cordoba School has finished drafting the "Political Bases" of the Model Code for Latin America, with the *Organization of American States* sponsorship (Clariá Olmedo 1978). Consolidating the regional projection of the Cordoba school, Maier was appointed in 1981 by the *Ibero American Institute of Procedural Law* to draft the Model Code for Latin America. While drafting it, democracy returned to Argentina.

Turning a reform defeat in Argentina as an opportunity for regional foreign investments

After the transition to democracy in 1983 the opportunity came again to turn the scholarly-activist reformers intentions into new state institutions. Through academic contacts with legal advisors to President *Alfonsin* on transitional justice issues, *Maier* was commissioned a new criminal procedure code. Drafting the code, the Undersecretary of Justice, and *Maier's* collaborator, *Alberto Binder* – also a newcomer in the legal profession, son of a doctor – created new apparatuses to tackle other issues besides code drafting, giving birth to the "multidimensional approach" to criminal procedure reform en-

compassing code writing but also administrative aspects, including personnel and career aspects. This approach was shaped in part by the activist past of Binder, including his Gramscian "war of position" outlook. According to Binder:

> We found ourselves facing a [judicial] organization, an apparatus that had to be dismounted. With just writing a code and only discussing about it, everything was going to remain the same. I proposed a different perspective, an apparatus that confronts another apparatus and [the undersecretary of Justice] liked the idea, and we created a technical team of about 20 people, something that didn't exist in previous reforms [...] This was the same conception that came from the organizations of the 70s …you engage in a fight where you analyze as many variables as you could detect in an apparatus. Later on we discovered that this was called public policy methodology. (Interview *Binder*, December, 2009)

The "multidimensional approach" also tackled administrative aspects and this was related to the limited funds available for reform which lead them to contact experts at the *US National Center for State Courts*, copying their managerial and cost-analysis techniques. Scoring a loan from the *World Bank* in 1987, also forced them to deal with administrative aspects.

Maier and *Binder's* 1987 project – including a Jury, an independent prosecutor and a centralized court administration – faced unsolvable obstacles. *Levene* and competing "code-writers" from Cordoba heavily criticized their project in parliamentary commissions, something Maier and Binder tried to counter by mobilizing their international academic network with a conference where prestigious legal and socio-legal scholars of Europe and the Americas professed their academic approval of the new code (Consejo para la Consolidación de la Democracia 1989: 7). They also lost *Alfonsin's* political backing as his government faced serious economic and political limitations after 1987. Their code was archived in 1989 and in 1991 another one authored by then Chief Justice *Ricardo Levene Jr.* was passed. This code preserved the power of judges and police to investigate, subordinating prosecutors, introduced the plaintiff, incorporated judicial oversight over prisons and conditional freedom, but set aside administrative issues. The limited changes reflected the interests of political agents in preserving the status quo, in particular powerful judges, controlled by the governing parties. It also reflected the high personalism of policy making and the weakness of inter-party consensus of the renewed Argentine party system (Hathazy, 2013a: 122-127).

The defeated liberal reformers, *Maier* and *Binder*, decided to invest outside the Argentine state and abroad. In 1989, they created the *Institute of Comparative Studies in Penal and Social Sciences* (INECIP) in Buenos Aires, that allowed them to preserve their technical teams, works and information produced while working in the state reform commission; to renovate their international network of contacts to work abroad, and, in a typical process of re-importation, to take the battle over legal procedural reform back to its

original terrain: the provincial criminal courts of Argentina. Their exportation strategy would directly jump-start the Chilean reform effort, providing the Chilean reformers with theoretical grounding, reform planning and implementation know-how and their legitimacy. This reform expertise was consolidated through their work in Central America.

Through ties to the President of the *Guatemalan Supreme Court* that date back to an older network of academics, *Maier* and *Binder* traveled to Guatemala in 1989, a country that was seeing the conclusion of its civil war. Upon their arrival, they deployed their "multidimensional strategy," which combined code-writing with administrative design adding a consensus-building process, turning what they did in Argentina into a model. In Guatemala they encountered US scholars and *USAID* and the *US Department of State* who were crusading down from the north (Hathazy 2013a: 129-130; Langer 2007: 646-651). They clashed with the *USAID* officers' pragmatic interest in efficiency and their grand and managerially based approach, which was based on hefty contracts to private consultants. *Binder's* approach was too austere. After two years of negotiations, they came to an agreement and merged. From then on, the reforms "were going to be enormous [even if] we only needed 10% of that money to pursue our goals." (Interview *Binder*, August, 2010). After writing the code and the proposal for administratively re-organizing criminal justice services in Guatemala, passed in 1992, *Binder* went to El Salvador, which was also just coming out of a civil war and also searching for a post-war path towards institutionalization that would preclude the return of anything smacking of left-wing revolutionaries.

As *Binder* and *USAID* where maneuvering and competing over Central American countries, *Binder* decided to invest in Chile. He was contacted in 1991 by Chilean legal scholars before *USAID* and got there in 1992. *Maier* and *Binder's* participation in Chile would be decisive.

Victorious legal scholars and economists as reformers in Chile and the institutionalization of regional strategies

In Chile the position of the code-writer reformers emerged in the late 1960s within the academic pole of the criminal justice field, with the peculiarity that it was aided by Argentine scholars in the 1960s and that since the 1970s economists acquired a share in that position. The criminal procedure reformer figure arose from the tensions in the nucleus of the Chilean legal academic space, the *Universidad de Chile Law School* and, as in Argentina, involved newcomers with limited aristocratic networks that resorted to international contacts and legal tools combined with political alliances with upcoming parties. In the 1940s network-deprived newcomers to the law profession at the *Universidad de Chile* (e.g., *Miguel Schweitzer*, the *Drapkin* brothers, *Alvaro Bunster*, *Eduardo Novoa Monreal*) invested in the highly scholarly sub-disciplines, criminal law and criminal procedure and displaced the aris-

tocratic positivist criminologists that controlled the Criminal Law Chair. They mounted their challenge steeped in the German penal doctrine and dogmatic, provided here also by *Luis Jimenez de Asua* – the exile of the Spanish Civil war that took them to *Soler* in Argentina. In the 1960s this younger generation of scholars, later on called the "New Penal Dogmatic", occupied the most theoretically demanding and progressive positions at the *Universidad de Chile*. Some were Chileans like Juan Bustos Ramirez, but most were immigrants, like *Francisco Grisolia* or *Sergio Politoff* (Hathazy 2013a: 134-135).[4]

This generation built their international networks by studying and travelling abroad. Indeed, *Bustos Ramirez* studied criminal law in Spain in 1961, then received a PhD in Law in Bonn, Germany in 1965. In the meantime, *Grisolia* specialized in criminal procedure, both through the "intensive study of comparative law" and observing the "practical functioning of those institutions abroad" visiting France and Spain, but also Cordoba, Argentina, in 1964 thanks to a state fellowship (Grisolía 1963: 150).

Following the Cordoba model, between 1966 and 1970, *Grisolia* and *Bustos Ramirez* drafted – as part of a state commission – a criminal procedure code under Christian Democracy president *Frei* (1964–1970). The project was suspended with the inauguration of *Salvador Allende* (1970-1973). After the 1973 military coup, *Bustos Ramirez*, who worked in Allende's Interior Ministry, escaped for Argentina, and thanks to his German and Argentine contacts, including *Julio Maier*, he proceeded onto Germany, after which he began teaching in Spain, combining his liberal dogmatic studies with critical criminology (Bustos/Zorrila 1983). *Grisolia* stayed in Chile and continued drafting criminal procedure codes in the late 1970s and early 1980s, even during dictatorship, trying to seize the weak autonomy that Pinochet recognized to the Supreme Court. But these reform projects of 1979, 1985 and 1988 (Ortuzar 1989), launched from the academy and in a period where the monetarist economists where demanding judicial reforms, as we will see next, were systematically aborted by the conservative and corporatist Supreme Court, allied to and protected by *General Pinochet* (Hathazy 2013a: 132-136).

In the 1980s criminal procedure reforms plans added concerns with the organizational efficiency of the justice administration. This was the work of newcomers to the criminal courts field, economists working at the *National Planning Office* (ODEPLAN) and the *Finance Ministry*, the "fortresses of the Chicago Boys" (Cavallo/Sepulveda 1989: 559). In 1978 a special commission lead by economists, began studying the "judicial carceral system" (Ministerio de Justicia de Chile 1980) and among its "course of action" proposed a criminal procedure reform that would rationalize and computerize courts

4 *Grisolia* was a Spanish (Catalan) immigrant that arrived to Chile in the *Winnipeg* – a vapor organized by poet Pablo Neruda bringing Spanish refugees from the Civil War. *Politoff* was the son of an immigrant from Belarus (Guzmán Dalbora 2011).

work.[5] In the late 1980 and early 1990s, another group, located at the newly created *Universidad Diego Portales* Law School, and headed by *Jorge Correa Sutil* (who had a *Yale University* LLM), began working on transitional justice issues. Among them were Juan Enrique Vargas and Christian Riego, assistants to Correa Sutil and *Juan Bustos Ramirez* at Diego Portales and introduced the criminal procedure issue within the transitional justice agenda in the early 1990s (Palacios Muñoz 2011).

Right after transition to democracy in the 1990s, groups at the Diego Portales Law School and in the right-wing think-tanks were again working on justice reform projects. From within this reformist pole, the most dominated of the dominated progressive legal scholars, *Juan Enrique Vargas* and *Cristian Riego*, from the Diego Portales Law School invested their meager academic and political capitals, to become leaders within local reform scholars. They combined experience in work in human rights activism and in the *Rettig Truth Commission*, empirical studies framed in critical criminology introduced by *Juan Bustos Ramirez*, and *USAID* and *Ford Foundation* funding. Through *Bustos Ramirez* they also contacted and brought *Maier* and *Binder* to Chile in 1992 (Hathazy 2013a: 144-145).

The Portales group allied with economist-reformers experts led by *Carlos Valdivieso* (with a degree in International Economy from the San Diego State University and former manager of foreign investments funds in a Chilean bank) at *Fundación Paz Ciudadana*, a think-tank financed by the leading economic groups of Chile, and headed by the director of the Edwards media conglomerate *Agustin Edwards* (Ramos/Guzman de Luigi 2000; Valdivieso 1998). The economists also had an empirical perspective based on organizational efficiency studies and project evaluation. These two groups, counting with consensus-making strategies and organizational analysis provided by *Binder's* team, designed a reform-package for criminal courts that replaced judicial training and career aspects within the justice reform of the democratic government. With the backing of the second democratic president, *Frei* (1994-2000) and Justice Ministry *Soledad Alvear*, as well as both right-wing and the center-left parties, they saw the new code discussed in Congress between 1995 and 1999. In 2000 Chile adopted a completely new criminal procedure, with a new division of labor between judges, prosecutors and public defense, operating in a managerially rationalized system that increased processing capacities (JSCA 2008). Judges became secondary, controlling

5 During the 1980s they developed tools to "rationalize the administration of justice" (Ministerio de Justicia de Chile 1980: 106) and converted investment project-evaluation techniques into standards for judicial policies. They produced "a project evaluation analysis" for computerizing justice in 1986 (ODEPLAN-CIAPEP 1986), and another for the adoption of public legal defense services in 1988 (ODEPLAN-CIAPEP 1988). "Social project evaluation analysis" was developed by former development economist Ernesto Fontaine, adapting foreign investment analysis to evaluate the "social" i.e. economic benefits of public expenses (see Fontaine 1997).

legality and the protection of defendant's rights, and the Prosecutors' Office would direct a gigantic and powerful unified prosecuting policy executed by regional and district prosecutors directing criminal investigation. These became the initial components of the model regionally exported later on from the *JSCA*.

Exporting, evaluating and teaching the (Chilean) "reform" abroad

Given the effective implementation of the new criminal courts, prosecutors, and defense bureaucracies by 2005, the Chilean experts acquired regional recognition as experts on criminal procedure reform eclipsing the Argentine experts. To secure their investments, the original criminal reform experts, *Vargas* and *Riego*, first went back to school and then back into the academy once the reform process was captured by the Justice Ministry after 1997. *Vargas* pursued an MA in Public Policy Management at the *Universidad de Chile* in 1998 and then became the Diego Portales Law School Dean, while *Riego* obtained a LLM in 1996 at the *University of Wisconsin-Madison*. Then, since 1997, once the criminal procedure draft had been passed in Congress, they were aided again by *Soledad Alvear* to convince the *Organization of American States* to create "a supportive and evaluative organization for judicial reforms for Latin America" in Santiago (Langer 2007:656), launching the *Justice Center Studies of the Americas*. The initial recommendation adopted in the 1st meeting of *Ministers of Justice or Attorneys General of the Americas* (REMJA) on criminal procedure policies, combines the Argentine "multi-disciplinary" approach with the Chilean organizational and managerial concerns.[6] After its creation in the *OAS General Assembly* in 1999, the *Diego Portales* scholars became executive directors of *JCSA* and very soon they found themselves at the center of the regional networks of criminal reform experts (Palacios Muñoz 2011). At the *JCSA* they have become advisors for national governments and international organizations, and along with *Alberto Binder*, they became the "leaders of the most visible and well-funded institution in the area [and] have become two of the most important reformers in the region" (Langer 2007: 656).

Certainly, this reputation was made possible by the collective denial of the very specific conjunctures that made the Chilean, Argentine, Guatemalan and other previous reforms possible. In Chile, the "model case" an unusually strong and unified political arch created new criminal courts and prosecuting

6 The Recommendation of the 1997 Buenos Aires REMJA decided "To approach the process of modernizing justice from a multidisciplinary viewpoint that goes beyond strictly legal considerations, and embraces such aspects as: organizational analysis, systems management, social costs and benefits, economic and statistical studies" (REMJA 1997: 2).

bureaucracies that replaced completely the old criminal justice agencies. Turning the arbitrary outcome into necessity, these experts are also able to claim for themselves to be legitimate judges of the objective distance between their exported blueprints and the judicial reality in other political national contexts.

Since 2000, JSCA has become a major consultancy organization, in particular regarding the evaluation of state investments in justice reform. It replicates and exports since 2000, beside the code and organizational design, the peculiarly Chilean standard of evaluating the efficacy of state investments, introduced by the economists to rationalize state expenditures in the 1970s (Hathazy 2013a: 58) combined with productivity standards. In their new international consultancy service, they replicate more generally the 2003 evaluation of the first phase of the Chilean Criminal Procedure reform. To develop this new area of evaluation expertise, *Mauricio Duce* and *Andres Baytelman*, the youngest among the new generation of reformers, repeated the traditional strategy of obtaining external funding and developed a new parcel of expertise specialized in evaluating reform (a sector within reform expertise that remains as contested as any other [Hammergreen 2003]). In this case, since 1999, once "the reform has taken its course," Duce obtained new money from the *Flora Hewllet Foundation* to develop studies to "empirically evaluate the reform" (Interview *Duce*, August 2010). He got a LLM in *Stanford University* in 2000 – distinguishing himself from his elders and from the legal scholars at the *Universidad de Chile* who had studied criminal law in Germany. Baytelman, also a newcomer to the field, studied in the US and became an expert in plea-bargain, a subsector that was underdeveloped in the late 1990s. Since then, the young Chilean leaders and their assistants in Chile, along with Argentines, and their followers and contacts, have become advisors to reforms programs in, among others, Peru (2004), Colombia (2004), Mexico (Oaxaca [2006], Chihuahua [2006]), and even in the provincial courts system of Argentina (Catamarca [2003], Santa Fe [2007], Entre Rios [2007], La Pampa [2011] Rio Negro [2011], Neuquen [2012]), and Federal courts [2015]).

Through the JSCA the Latin American agents described, institutionalized at a regional level and with a regional scope the functions Dezalay and Garth (2011: 277) attribute to reformer-importers in periphery countries at the national level: (a) importing technologies or governing devices with universal legitimacy, (b) reinterpreting and adapting it to local realities, (c) evaluating the coherence and efficacy of local implementation compared with the general standards, and (d) providing the means to solve such distance. From this regional hub, they also created an academic-credentializing position through training programs that legitimates would-be reformers that is competing with US and European traditional credentials. The dogmatic, political and empirical-evaluative skills of the Argentine and Chilean reformers are codified, transmitted and certified as routinized credentialized charisma. These credentials and participation in the JSCA network became highly valued to occupy

positions in the reformed national judiciaries, thus, also formalizing the traditional conversion of activist-reformer's capitals into judicial posts.

Conclusion: tracing the origins of contemporary penal state building from national to regional circuits of penal state expertise

This study showed that the creation of the core positions of the network of scholar-reformers in the south, involved in the regional waves of reforms in the criminal procedure since the 1990s, results directly from the importation-exportation strategies of reform experts that adopt those strategies as part of their struggles within national fields. Going beyond the self-presentation of reformers as activist-scholars, I accounted for those strategies as derived from reconversion strategies of academically rich newcomers to the legal professional or the legal field, investing in foreign know-how and contacts from Europe, the US or Latin America, transiting to politically richer positions, and eventually investing regionally to further their struggles at home and dispute authority about reform to agents from center countries.

Understanding the national origins of these strategies that always encompassed international capitals, European and North American, in the different cases, is all the more important, as their symbolic efficacy resides also in the denial of these national interests and in of the presentation as either carriers of universal values (democracy, liberty, equality or efficiency) or as "authentic representatives of veritable Latin American" experts. This legitimacy in turn justifies, technically and politically, the massive enterprise of penal state building through criminal courts and procedure reform in many countries of Latin America in the last decades and paradoxically contributes to expand the prison populations in the region, the opposite of the reformers initial intentions (Hathazy 2013b; Hathazy/Müller 2016)

The criminal courts fields constitute only one sector of the national penal fields, which encompass also the policing and carceral fields, where policing and imprisonment policies, respectively, are fought upon (Hathazy 2013a). The same internationalizing strategies of agents in Latin American national penal fields – importation from the north, incubating, hybridizing and then regionally exportation of penal state expertise – appear to be operating regarding regionally circulating policing and prison policies. The Chilean policing "Quadrant Plan," combining counterinsurgency urban zoning imported from Brazil, the US and France in the 1960s, with US community policing, public relations know-how, and new public management introduced in the 1990s (Hathazy 2013b), has been combined, packed together and exported to Colombia, Peru, Guatemala, El Salvador, Dominican Republic, Panama and Mexico, and counts with *Inter-American Development Bank* sponsorship (IDB 2015). Argentina exported its "peronist" penitentiary policies all through the 1950s to the 1970s (Hathazy 2013a: 169-172), and

Chile has exported its prison privatization programs, combining French and English privatizing schemes (Hathazy 2013a: 188-190) to Brazil in the 2000s (Macaulay 2013). These penal state technologies circulating regionally are also coined under the pressures of the struggles of the national penal fields and exported as a result of the failure (or relative success) of their promoters in each country. The mechanisms of national field struggles and regional import-export strategies deployed here appear better fit to analyze those regional circuits of penal expertise and to unveil the system of transnational, national and local interests that propel them instead of resuming to simplifying and mystifying narratives of global neoliberal impositions, impersonal diffusions or idealistic impulses of experts or activists.

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Paul Hathazy, CONICET/CIECS, Universidad Nacional de Córdoba, Argentina, Rondeau 467, CP X5000AVI, Argentina.
E-Mail: paulhathazy@conicet.gov.ar