



Postneoliberalism and Penalty in South America: By Way of Introduction

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Introduction: Growth in incarceration rates

In the last two decades, there has been an extraordinary growth in incarceration rates in South America, with some variations across national contexts but generally in line with the same trend. Twenty years ago, incarceration rates were relatively low in most countries in the region; despite that knowledge, it has proved difficult to reconstruct the official data for that period.² In 1992, with the exclusion of the small countries with less than one million inhabitants in the Northern region of South America such as Guyana, French Guyana and Surinam, only three countries had 100 prisoners or more per 100,000 inhabitants: Uruguay (100),³ Venezuela (133)⁴ and Chile (154) (see Figure 1).⁵ Several other national contexts reflected 'Scandinavian'⁶ rates, such as Argentina (62), Peru (69),⁷ Ecuador (75)⁸ and Brazil (74).⁹

Of course, as has repeatedly been pointed out, the incarceration rate is an incomplete indicator when it comes to measuring levels of punitiveness, which is understood here in broad terms to be the levels of pain or suffering caused by the criminal justice system, but this measure has proved to be a good starting point (Sozzo 2011, 2013). The living conditions in the prisons in Argentina or Peru in 1992 were very different from those in Denmark or Finland. Further, the reasons for the relatively low levels of incarceration in these two regions at that time were probably also very different. Accordingly, our empirical approach towards punitiveness – both in terms of extent and intensity and using both quantitative and qualitative methods – should, in general terms, be more nuanced (Brodeur 2007; Frost 2008; Hamilton 2014; Hinds 2005; Kommer 2004; Nelken 2005, 2010a, 2010b; Pease 1994; Tonry 2007). We simply use this imperfect indicator of incarceration rates here because it is the only one available and in this way we can at least approach this complex phenomenon.¹⁰ In any case, it is an indicator that reveals a relatively contained use of the prison system, both in terms of punishment but also as a preventative measure, in the region at that time.

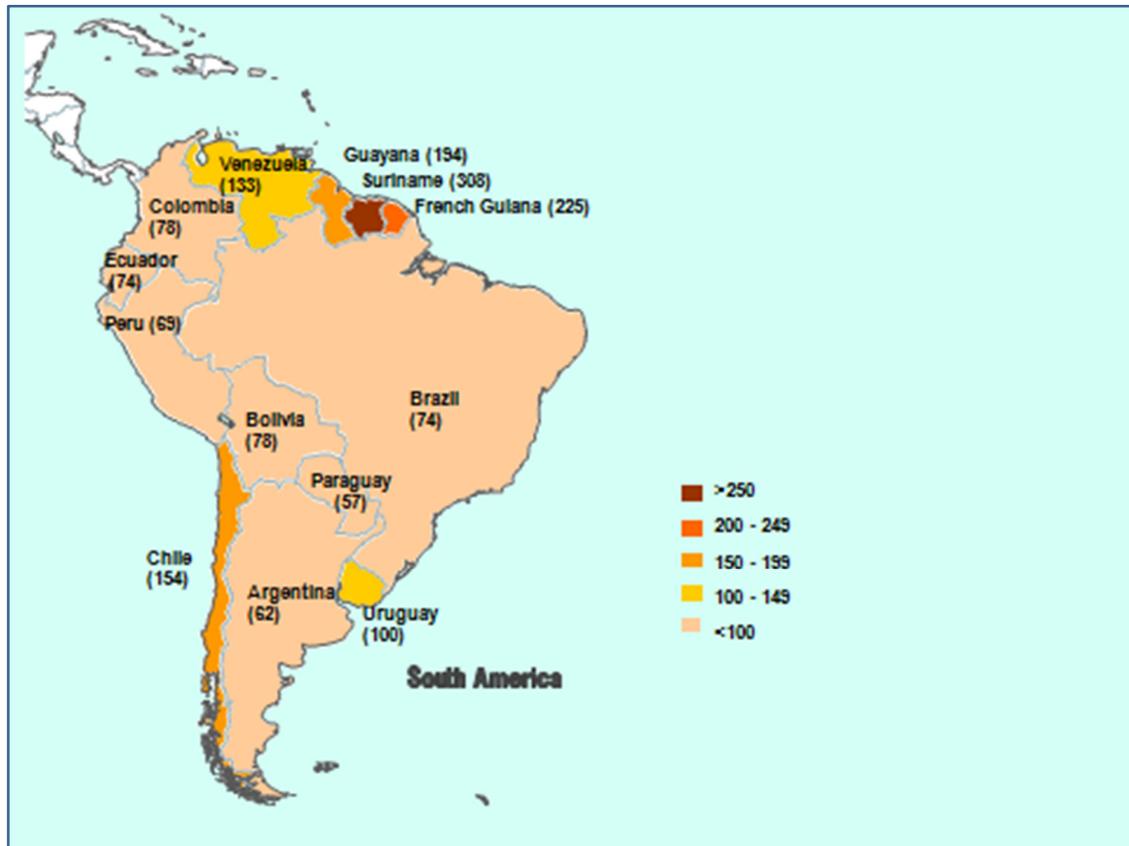


Figure 1: Incarceration rates, South America, 1992¹¹

This outlook has radically changed in just over two decades. Currently (with data referring to 2014 and 2015), all South American countries have incarceration rates of above 150 prisoners per 100,000 inhabitants, except for Bolivia (134/100,000). There are four other countries that have fewer than 200 prisoners per 100,000 inhabitants: Argentina (161)¹² Paraguay (158), Ecuador (165)¹³ and Venezuela (172)¹⁴. But all others have exceeded that threshold: Peru (236), Chile (240), Colombia (244), Uruguay (282) and Brazil (300) (Figure 2).¹⁵ South America now finds itself far from the levels of incarceration in Scandinavia, which have largely remained at the levels of twenty years ago.¹⁶

Postneoliberal political changes

As mentioned, the growth in the incarceration rate has been extraordinary in the last two decades, despite the strong variations among the different national contexts. The greatest growth in incarceration rates has occurred in Brazil with an increase of 305 per cent between 1992 and 2014, followed by Peru (242 per cent between 1992 and 2015), Colombia (212 per cent between 1992 and 2015), Uruguay (182 per cent between 1992 and 2014), Argentina (160 per cent between 1992 and 2014) and Ecuador (123 per cent between 1992 and 2014). The growth rate is shown to be more contained due to elevated starting points at the beginning of the period under review in the case of Chile (56 per cent between 1992 and 2015) and Venezuela (29 per cent between 1992 and 2014). Bolivia similarly showed a relatively contained growth rate (72 per cent between 1992 and 2014). In the case of Paraguay there was a very significant growth over a shorter period, 177 per cent between 1997 and 2014. Even though similar growth trends can be observed in other global regions during this period the degree to which it occurred in South America has been extraordinary.¹⁷

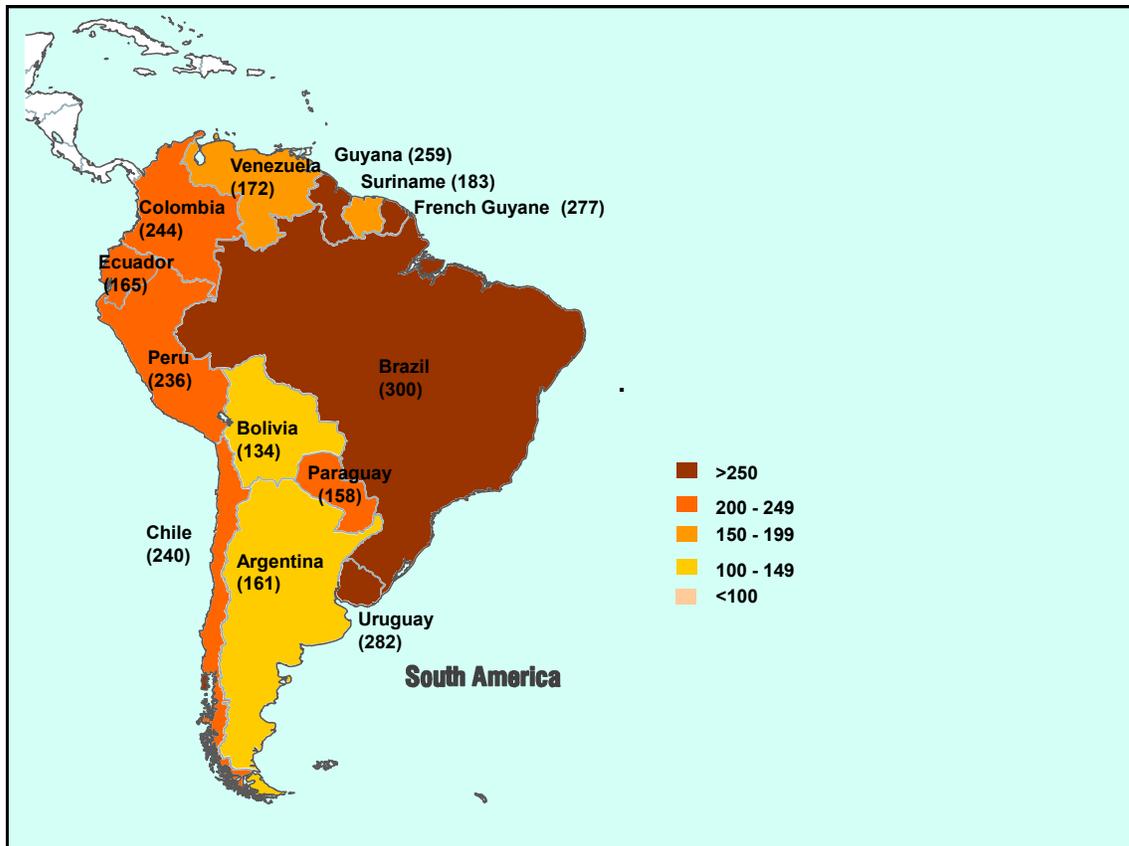


Figure 2: Incarceration rates, South America, 2014/2015 (latest year available) ¹⁸

This punitive turn in South America has been associated in the emerging sociology of punishment literature in the region with the ascendance since the 1970s of neoliberalism as a transnational political project (Iturralde 2010, 2012, 2014; Muller 2011). This interpretation is based essentially on the appropriation of Loic Wacquant’s argument, developed to think about the case of the United States, but extended also to understand the penal present in Europe – particularly in France – by means of the identification of an import process of penal discourses and practices which previously has been generated in this scenario, that contributed to the construction of a ‘neoliberal penalty’ (Wacquant 2000, 2005, 2010, 2013).

This neoliberal political project, which was driven across national borders by a complex elite of dissimilar actors, boosted a triple transformation of the state: connected ‘causal and functionally’, in response to the changes of the capitalist economy; the transition from Fordism to Post-Fordism; and the high levels of social insecurity. These factors generated the abolition of state intervention in the economy; the decrease and change of logic from *welfare* to *workfare* in relation to their social interventions; and the expansion and change of logic, from rehabilitation to deterrence and incapacitation, in relation to their penal interventions.

This complex process is generally viewed to be more radical and extreme in the context of South America than in the global North, because it progressed from an already highly fragmented social landscape that was characterized by high levels of poverty, unemployment, inequality and street crime, especially violent crime (Iturralde 2010, 2012). This focus can also be observed in an article written by the same Wacquant about Brazil in 2003, in which he diagnosed the emergence of a ‘dictatorship over the poor’ through the expansion of the Penal State in that context (Wacquant 2003: 198; see also Muller 2011; Wacquant 2008). In general, the weight and

dynamics of the imported 'Made in the USA' discourses and practices are recognised for the South American scenarios within this interpretation (Muller 2011: 5), not only from the 'zero tolerance' policing model to the accusatory model in criminal proceedings, but also the presence of endogenous processes that are inscribed in peculiar historical trajectories (Iturralde 2012).

We will not discuss the plausibility of this ambitious explanation to understand the global landscape of legal punishment at present (for a critical look, see Lacey 2013; Nelken 2010a, 2010b; Newburn 2010; O'Malley 2012; Valverde 2010). But as the contributions to this special issue illustrate, their findings in general pose a challenge regarding the possibility of applying the neoliberal penalty thesis to certain South American contexts that in recent years have experienced strong processes of political change. The punitive turn is not a uniform project that rolled out across the globe from North America. Rather the translation of global trends in penalty in the global South produced different outcomes at differing times and national contexts, with varying degrees of force and effect. To understand them we need to consider its connections with local past and present economic, cultural, social and political processes (Carrington, Hogg and Sozzo 2016).

As is known, in recent years, processes of decisive political change have emerged in various national contexts in South America, which are tied to the rise of alliances and political programs that are constructed around vocabularies more or less loosely associated with local leftist traditions. These vocabularies possess different levels of radicalism. There are important differences between them, as each has its own peculiarities, to some extent associated with the previous political context. But, in all cases, the identity of these alliances and political programs are constructed around a strong antagonism toward the foregoing dissemination of 'neoliberalism' in the region. In a minimal and restricted sense, these political changes thus opened a new 'post-neoliberal' period. Of course, the degree to which these breaks with the previous neoliberal period is translated into practice depends dramatically on the different experiences. This opens a whole set of discussions in contemporary social science about the region, both in general and with regard to various particular issues. In this regard, this special issue and the collective inquiry of which it forms part – within the framework of Working Group 39 of the CLACSO: 'Post-neoliberalism and crime control policies in South America' – is intended as an initial response to this debate specifically in relation to the sociology of punishment.

The processes of political change that are frequently recognised as the more radical within the context of this post-neoliberal turn are those that occurred in Venezuela, Bolivia and Ecuador. In the first case, it began in February 1999 when Hugo Chávez assumed the presidency; he was successively re-elected in 2000, 2006 and 2012. After his death in March 2013 the process continued until the presidency of Nicolás Maduro, who was elected that year. In the case of Bolivia, the political change began in January 2006 with the inauguration of president Evo Morales who was re-elected successively in 2010 and 2014. In Ecuador, the third case, it began in March 2007 with the inauguration of President Rafael Correa, who was re-elected in 2009 and 2013. The shared appeal to these three nations of a new version of socialism as part of their rhetoric and political practice is probably one reason for the frequent recognition of its radicalism. Additionally, a large rupture with long-term political patterns – with their peculiarities – has been embodied within each national context. This has produced a strong democratizing effect through the activation of social mobilization and participation, particularly amongst disadvantaged sectors, which has profoundly transformed state structures. It is, therefore, not mere chance that they have untangled constituent processes that have resulted in new constitutions, which in turn has led to strong changes with regard to the legal traditions of each of these three countries. Strong state intervention in the economy, the re-nationalization of various productive activities and public services, the foreign policy relations with the global North and the expansion of social policies are some of the innovations that were introduced within this context of political change that gave substance to a post-neoliberal identity.

Whether the same can be said of other political experiences that developed in the region at the start of the 2000's is more heavily debated. I am referring to the processes in Brazil, Argentina and Uruguay. In the first case, change was initiated in January 2003 with the presidency by Luiz Inácio Lula da Silva, who was re-elected in 2007. This political experience continued with the election of President Dilma Rousseff in 2011 who was re-elected in 2014. In Argentina, the process began with the election of Néstor Kirchner as President in May 2003, replaced by his wife Cristina Fernández de Kirchner who was elected as President in the 2007 and 2011 elections. Finally, in Uruguay the process started in March 2005 with the presidency by Tabaré Vazquez, who from 2010 onward was replaced by president Mujica until the election of Tabaré Vazquez in 2014. Within these three national contexts more symptoms of transactions with the recent and distant past and a stronger degree of moderation in the proposals and changes in various fields can be observed. In some of these cases this translated in the gestation of government alliances themselves, including sectors and parties that were distant from any type of linkage with the progressive tradition. This perhaps reached the highest level in Brazil, especially in the last years of this political experience.

However, this has not prevented the deployment of various initiatives that claim to embody a post-neoliberal identity, that were positioned at the centre of the political and public agenda and on which a large part of the accession of voters and supporters of these political experiences was built. For example, in the case of Argentina, 'Kirchnernism' – a complex governmental alliance that embodies a post-neoliberal face of the long Peronist tradition – installed various initiatives that were constructed to antagonise the ways of neoliberal and neoconservative thinking and acting which in the recent past had been dominant in this national context. These included: the cancellation of the external debt with the World Bank and the International Monetary Fund and the rejection of its role in dictating and controlling decision making in local economic policy; the alignment with progressive governments in rejecting the United States' proposal for the Free Trade Area of the Americas (FTAA); Neo-Keynesian policies that rebuilt various mechanisms of state intervention in economic life; the expansion of social policies, particularly the development of the Universal Allowance per Child; the reconstruction of collective negotiation between employers and unions; the nationalization of productive and public services companies that had been privatized during the wave of neoliberal reforms; and so on.

In any case, it seems that it is very difficult to think about these political processes as a mere continuity of the neoliberal period in the region. Nevertheless, the way that the punitive turn in South America is understood in sociological literature by reference to the development of a neoliberal transnational political project overlook this evident difficulty. Iturralde (2010: 311-312) recognized the potential impact of these political changes in the penal field as something relevant that specifically needs to be studied, but later points out, anticipating a general conclusion:

Even though the new leftist governments of the region have tried to secede from the penal discourses and policies of their right-wing predecessors, their effectively adopted policies and approaches are very similar to those of their political opponents. This may, in part, have resulted from a lack of original and reliable ideas that emerged in these governments, but also from the fear of weakening their political position if they appear too soft with respect to crime and because of the fear to confront the state security forces that are very powerful and many of whose members are still very attached to the methods and ideas of the authoritarian regimes. (Iturralde 2010: 323)

It is precisely the invitation that is contained within this remark that this special issue – and the collective inquiry in which it is inscribed – aims to capture and unfold, including a review of this general conclusion. In all these six countries, the incarceration rate has grown during the different periods in which these post-neoliberal political alliances ruled, though not to the same degree

and starting from different preceding levels (Figure 3). In Venezuela, between 1998, the last year before starting the process of political change, and 2014 – a period of 16 years – the incarceration rate grew by 65 per cent. In Brazil, between 2002 and 2014 – in 12 years, a shorter period than in the case of Venezuela – the incarceration rate increased by 119 per cent. In Argentina, between 2002 and 2014 – a similar period to that of Brazil – the incarceration rate increased by 32 per cent. In Uruguay, between 2004 and 2014 – in one decade – the incarceration rate increased by 35 per cent. In Bolivia, between 2005 and 2014 – nine years – the incarceration rate increased by 81 per cent. And in Ecuador, between 2006 and 2014 – in eight years – the incarceration rate increased by 59 per cent.

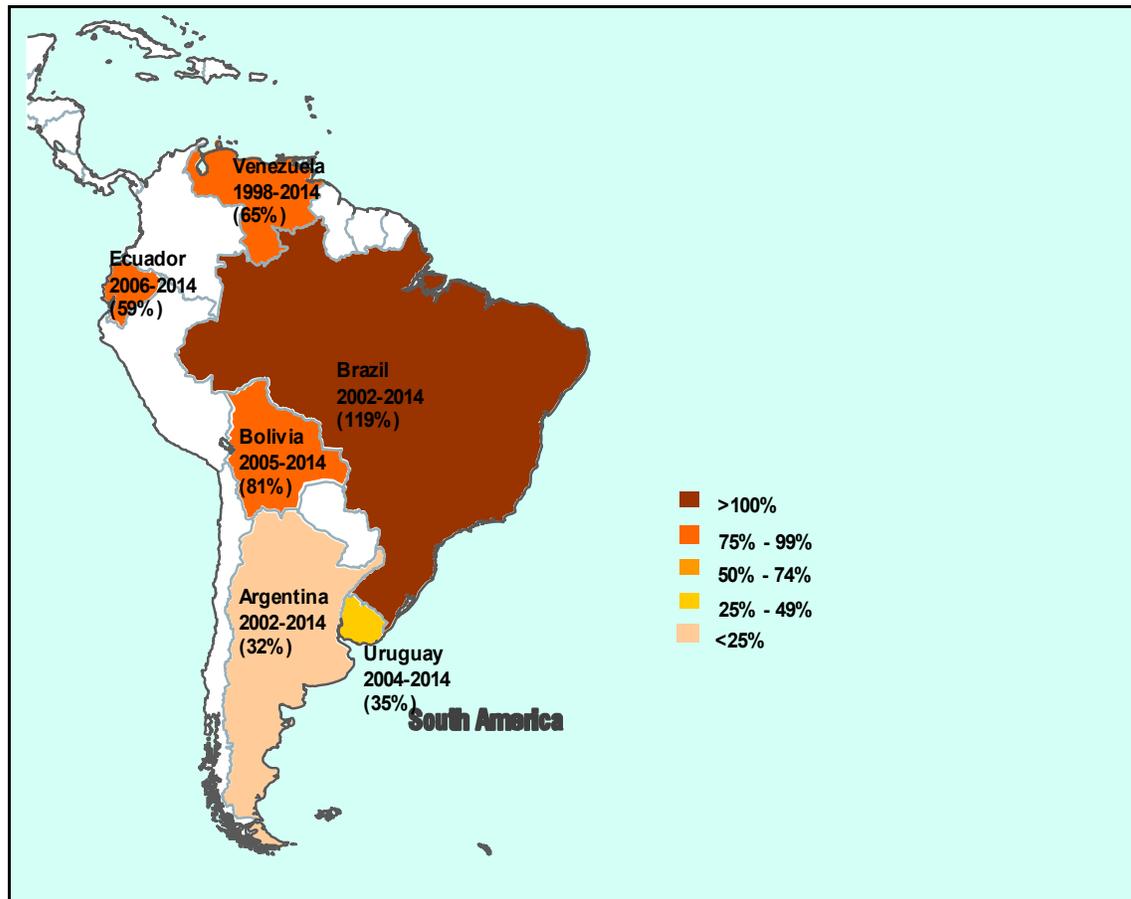


Figure 3: Growth rate of the incarceration rate in countries that have experienced political change, South America

In all these countries, these processes of political change lasted over a decade. In any case, they have far exceeded the potential characterization as circumstantial mutations. That is why this special issue aims to make an original contribution to the discussion about the evolution of penalty within the context of these political change processes, recognizing its entity and relevance. It addresses four of these six national cases (Venezuela, Ecuador, Brazil and Argentina), and we hope that this work boosts similar analyses on the other two (Bolivia and Uruguay). To this end, authors of each piece have worked on developing an in-depth analysis of each national case study, from a common minimum research design, which involves a crucial element such as the incarceration rate but that multiplies the possible openings to the dynamics of the penal field in each scenario, based on the strong recognition of its embeddedness and peculiarities. We believe that this initial contribution may later be reinforced by further explorations. Spreading it

in the English-speaking world, through this special issue, is a very significant task to amplify and enrich the debate.

Politics and penalty

In recent years, certain narratives have emerged in the sociology of punishment that, from different perspectives, have emphasized the dependence of the penal policy transformations, including the levels of punitiveness, on the structural changes of social life which, in turn, tend to be ascribed the status of epochal and even global change, with smaller or larger degrees of caution. Perhaps the most well-known example has been the work of David Garland (2001; also see 1996, 2004). But there certainly have been other significant efforts, such as the work of Wacquant which I have made reference to here. However, these connections are often postulated in a way that fails to fully address 'how' these different structural transformations are effectively connected with the decisions and actions that occur in the penal field (Goodman, Page and Phelps 2014; Matthews 2005; Nelken 2010b; O'Malley 2004a).

Recently, Garland himself has acknowledged this to some extent, posing that some of the narratives that attempt to explain penal changes, including his own, have failed to adequately address the 'specific processes that "translate" social causes into criminal effects, examining how these transmission processes operates in different jurisdictions'. Within this context, Garland (2013: 483-484) calls for a move from the 'background causes' to 'proximate causes' which are 'causally determinative'. Beyond this 'causal' language, this appeal is substantially similar to the one we posed when referring to the 'how' of the connections presented in the explanatory frameworks. From my point of view, 'politics' plays a central role in the structuring of this 'how'. This because it is the translation space, *par excellence*, of what happens in social, economic and cultural relations, in the field of penalty (Garland 2004; O'Malley 2004a; Savelsberg 1999).

Much recent sociological and criminological literature has argued for the need to generate a more detailed exploration of the relationship between politics and penalty to understand the changes that have occurred in recent decades. But these appeals clearly depart from distinct ways of conceiving politics. There have been a number of recent invocations about the need to consider certain institutional dimensions of it – or what is often referred to as the 'state' – to understand penal change, especially within challenging comparative views. For example, consider the interesting work pioneered by Joachin Savelsberg (1994, 1999, 2002, 2004), which departs from a comparison between the United States and Germany, focusing on the importance of institutional mechanisms of production and dissemination of knowledge and beliefs and legal and political decision making. Or think about the recent explorations by Nicola Lacey (2008, 2010a, 2010b, 2011a, 2011b, 2013) that look at the relationship between various types of capitalist political economies and different penal policies, constructing a model of 'interlinked variables' in which 'institutional dimensions' are emphasized and are related to the characteristics of the political systems (electoral models, types of professional bureaucracies) or the constitutional structures (distribution of decision-making powers or the selection and tenure of judges and prosecutors). These works can be useful, but remain in the field of defining 'factors' that could, in a probabilistic sense, produce penal outcomes, even though they don't always do it, as evidenced by some of the works of the same authors when they 'descend' on the detailed exploration of certain national cases, such as with New Zealand as analysed by Lacey (2010a, 2010b, 2011a, 2011b). In this sense, they provide a good point of departure but never an arrival point for the unfolding of the description and interpretation. They leave, to some extent, a 'black box', because they do not account for 'the empirical processes and actors' choices' (Garland 2013: 492).

This special issue seeks to be a contribution in encouraging the development of studies about the relationship between politics and penalty but not in terms of trying to sustain the weight of certain institutional dimensions thereof as conditions that make certain penal changes possible. In the studies that do integrate it, the emphasis is put on the exploration of the results – always

relatively contingent and contestable – of the constant material and symbolic struggles between the actors that in certain times and places have distinctive types and amounts of force in the political field. This especially applies to how certain alliances and governmental programs approach penalty and what continuity or discontinuity they introduce with regard to their recent and distant past, within the context of some particular change processes that have some common elements across distinct national scenarios. This does not mean that these are the only actors who play a relevant role in these conflicts about the power to punish, which determine how much and how pain should be intentionally inflicted on whom, and why (Christie 1982). As has been already pointed out, the very agents of the penal field – judges, prosecutors, police, prison guards and directors, and so on – play a central role, with their ways of thinking and acting to a large degree moulding the penal results (Cavadino and Dignam 2006, 2011; Goodman, Page and Phelps 2014; Nelken 2010a, 2010b). These actors and their strategies appear with varying degrees of intensity in the different studies included in this special issue, but there is no doubt that there is need for a wider range of explorations about this dimension of the very same national cases to be further developed in the future.

This special issue seeks to emphasize the crucial place of the political struggles, in a broad sense, that are often lost in the contemporary debate, in the description and explanation of a 'great transformation' which appears not to depend on the choices and actions of any agent (Brown 2005; O'Malley 2004a, 2000; Goodman Page and Phelps 2012). In this direction, we follow here the propositions that recently have been made by numerous contemporary authors in the sociology of punishment (Beckett 1997; Beckett and Sasson 2001; Cavadino and Dignam 2011; Feeley 2003; Goodman, Page and Phelps 2014; Gottschalk 2006; O'Malley 1999; Sasson 2000; Scheingold 1991; Simon 2007; Simon and Feeley 2003; Sparks 2003a, 2003b; Pavarini 2006). Of course there exists the danger of falling in a 'voluntarist' extreme. As David Garland warns:

But it is possible to overestimate the scope for political action and overstate the degree of choice that is realistically available to the governmental or non-governmental actors ... such choices are always conditioned by institutional structures, social forces and cultural values. (Garland 2004: 181)¹⁹

Beyond acknowledging its limitations and constraints, which always condition but never determine (Goodman, Page and Phelps 2014: 5) a more 'substantively political' approach (O'Malley 1999; Sparks 2001) of the penal changes implies, insisting on 'a method that sees political combat as pivotal in determining the character of crime control ... rather than epiphenomenal to the master patterns of structural change' (Sparks and Loader 2004: 16). The detailed delineation of the force of the political struggles cannot be carried out in a general and abstract manner. It has to be, in any case, something explored in its embeddedness in certain historical and cultural contexts (Melossi 2001; Melossi, Sparks and Sozzo, 2011; Nelken 2011).²⁰ It is also, undoubtedly, a condition for resistance and contestation (Brown 2005; O'Malley 2000; Sparks and Loader 2004).

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- ¹ This article was originally published in Spanish (available at http://biblioteca.clacso.edu.ar/clacso/gt/20160404115404/Postneoliberalismo_penalidad.pdf) and was translated for this special issue.
- ² Where possible, we have used the official data that the several governmental authorities report to the International Center for Prison Studies for the development of the World Prison Brief. However, it is necessary to mention that in some cases these data did not coincide with the data that the same governmental authorities provided in different instances for the same time period and that were found in other works. We will make specific notes of these occasions in the footnotes. It especially occurred frequently for the 1990s. When this source was not available we turned to others that were available, both on a regional and a national level which will specifically be indicated.
- ³ For this year other sources referred to a rate of 96 prisoners per 100,000 inhabitants (Carranza 2012; Dammert and Zuñiga 2008).
- ⁴ We here used the data from the official source – National Directorate for Penitentiary Services – reported by Hernández and Grijales in the respective article of this current special issue.
- ⁵ Other sources, which quote from official information, refer to a rate of 148 prisoners per 100,000 inhabitants for this year (Dammert and Zuñiga 2008).
- ⁶ In this year, the incarceration rate, according to the Institute for Criminal Policy Research (ICPS), was 58/100,000 in Norway, 60/100,000 in Sweden, 70/100,000 in Finland and 70/100,000 in Denmark.
- ⁷ Other sources, that quote official information, refer to a rate of 77 prisoners per 100,000 inhabitants for this year (Carranza 2012; Dammert and Zuñiga 2008).
- ⁸ Here we have used the official data of the National Social Rehabilitation Service as reported by Paladines in the respective article of this special issue.
- ⁹ Here we have used the official data as reported by Carranza (2012) and Dammert and Zuñiga (2008).
- ¹⁰ At the same time, we must recognize the difficulties that the comparisons around this indicator have in the region. In the first place, the state agencies that generate the information are often also those that are responsible for the governance of penal institutions and there is not usually a reliability monitoring mechanism in place. Secondly, the criteria to define the prison population and therefore calculate the incarceration rate are not identical in each country. In some cases, people who are enjoying prison benefits such as temporary releases, daytime imprisonment or night-time imprisonment are included but not in others. Additionally, in some countries in the region there are many people that are deprived of their freedom in institutional settings that are not managed by correctional agencies but rather by the police forces – even when they are processed or convicted – such as in Brazil or Argentina. In some cases, these numbers are included in the official calculation of the incarceration rate but not in other cases. (Dammert et al. 2010).
- ¹¹ The data available from French Guyana are from 1998 (ICPS). The data for Paraguay are from 1997 (ICPS). For the same years some other works report a rate of 70 prisoners per 100,000 inhabitants in this country, also citing official sources (Carranza 2012; Dammert and Zuñiga 2008). For 1992 other sources report different official data for Colombia: 92 prisoners per 100,000 inhabitants (Carranza 2012) and 74 prisoners per 100,000 inhabitants (Dammert and Zuñiga 2008).
- ¹² In this case, we included the official rate of 2014 as produced by the Ministry of Justice and Human Rights of the Nation for this year as reported by Sozzo in the respective article of this special issue.
- ¹³ In this case we included the rate from the official data of 2014 as produced by the National Directorate of Social Rehabilitation as reported by Paladines in the respective article of this special issue.
- ¹⁴ In this case, we included the rate from the official data of 2014 as produced by the National Directorate of Penitentiary Services as reported by Grajales and Hernández in the respective article of this special issue.
- ¹⁵ In this case we included the rate from official data of 2014 as produced by the National Penitentiary Department as reported by de Azevedo and Cifali reported in the respective article of this special issue.
- ¹⁶ Namely: Finland (55 for 2014), Sweden (57 for 2014), Denmark (67 for 2014) and Norway (75 for 2014).
- ¹⁷ A similar trend can be observed in a large part of the English-speaking countries. According to the ICPS, the incarceration rate between 1992 and 2014 increased by 65.5 per cent in England and Wales, 60 per cent in New Zealand and 62 per cent in Australia. The rate increased by 41 per cent in the United States, while in Canada it decreased by 6 per cent between 1991 and 2013. However, in all these countries the growth rate is lower than in any

of the South American countries, with the exception of Venezuela and in the case of Chile similar rates can be observed.

¹⁸The source of these data is the ICPS, with the exception of the aforementioned cases of Argentina, Brazil, Ecuador and Venezuela. The data from Chile, Colombia, Peru and French Guyana refers to 2015. For the following countries the data refer to 2014: Bolivia, Ecuador, Paraguay, Uruguay, Brazil, Venezuela, Suriname, Guyana and Argentina.

¹⁹Or, as Jock Young (2004: 554) posed in a more general and classic way, recalling the words of Marx in *The Eighteenth Brumaire of Louis Bonaparte*: 'We exist, as it is said, in a world not of our making, we make our history not just as we please but under circumstances not chosen by ourselves, but encountered and transmitted from the past'.

²⁰Faced with a style of contemporary literature that does not give importance to 'place' in their descriptions and explanations of what is occurring in the penal field, this implies a commitment to the development of 'more detailed and specific, empirically based' explorations of the 'transformations and continuities' 'in the particular jurisdictions in recent decades' (Brown 2005: 28; see in the same direction, Newburn and Jones 2005; Newburn and Sparks 2004; O'Malley 2004b; Sparks 2001; Sparks and Loader 2004).

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