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Democratizing Leviathan: Bureaucrats, Experts and Politics in the Transformation of the Penal State in Argentina and Chile

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Democratizing Leviathan: Bureaucrats, Experts and Politics in the Transformation of the Penal State in Argentina and Chile

By

Paul Carlos Hathazy

A dissertation submitted in partial satisfaction of the requirements for the degree of

Doctor of Philosophy

in

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in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Loïc Wacquant, Chair
Professor Marion Fourcade
Professor Jonathan Simon
Professor Javier Auyero

Fall 2013
Abstract
Democratizing Leviathan: Bureaucrats, Experts and Politics in the Transformation of the Penal State in Argentina and Chile

by
Paul Carlos Hathazy
Doctor of Philosophy in Sociology
University of California, Berkeley
Professor Loïc Wacquant, Chair

This dissertation investigates how post-authoritarian Argentine and Chilean state penal bureaucracies changed their organizational goals and practices. It dissects how, in the first two decades of democracy, professional strategies, bureaucratic interests and domestic political forces, all operating within historically specific and structured local penal policing, criminal courts and carceral fields, (a) shaped the elaboration of reform plans attempted within the police, criminal courts and prisons administrations, (b) determined the differential evolution of the police, criminal courts and prison bureaucracies and (c) defined the new overall architecture and functioning of the penal sector of the state in these two countries.

Following a Bourdieusian field theory perspective, I explain the distinct evolution of these penal organizations since the turn to electoral democracy resulting from the interaction of three basic mechanisms: the reconversion strategies of penal experts to gain positions within the policing, criminal courts and carceral fields, the struggles between top-level penal bureaucrats and central governments agents in these fields over field-specific authority, and the political orientation of the central government as determined by the properties of the reconstituted political field after the transition to democracy.

In the cross-country comparative analysis of the evolution of the police, courts and prisons of Chile and those of the federal criminal justice system of Argentina, I follow how these mechanisms interacted in specific combinations that produced different outcomes. I explain why, in Chile, only the highly autonomous police ended up changing policing from national security to citizens security, and incorporating managerialism, community policing and accountability practices and only the highly autonomous courts incorporated new accusatorial criminal procedure dominated by proactive and independent prosecutorial administration, models introduced by the new experts, while the less autonomous prison administration, even if expanded, did not change in line with the new programs emphasizing rehabilitation and inmate rights. In Chile, I argue, the constant pressures of the consensus-oriented party system produced change in the police and courts, but discontinuity in prison reform, as political interests and concerns ended up eclipsing
bureaucratic authority and standards. Using the same approach, I explain why the three historically heteronomous police, court and prison administrations in the federal bureaucratic field of Argentina ended up not incorporating these new models that democratic-era reformers proposed there, which were similar those of Chile. This outcome was a result of the continuous interference of the highly volatile party system and the changing orientation of the executive branch, which limited the institutionalization of new models and expertise within the highly heteronomous penal organizations.

I follow in four chapters the interaction of these mechanisms and their outcomes in terms of the evolution of penal bureaucracies and the reconstitutions of each penal field. I first compare and explain the evolution of the police in Argentina and Chile (chapter two). Next, I examine the transformations in their criminal courts (chapter three), and then turn to the mutations in the prison administrations (chapter four) in democratic times. In chapter five, I integrate these independent processes to describe the structural and symbolic reconstitution of each penal field. There I analyze how the processes in the police, criminal courts and carceral fields produced a distinct reconstitution of the penal sector of the state in democratic times, with a new structure of relations among the core penal bureaucracies, new symbolic regimes, distinct material effects and different modalities of penal policy-making. In Chile, the penal sector of the state evolved from a space controlled by military agents and a logic of counterinsurgency during the dictatorship, into one integrated under the dominance of expanded and reformed criminal courts, which served to legitimize both the expanded and panoptic police as well as the enlarged but unreformed warehousing (semi-privatized) prison bureaucracy. In Argentina, by contrast, the struggles around organizational reform, which produced very limited changes in the goals and functioning of bureaucracies, led to a functionally and symbolically fractured penal state, where each bureaucracy turned to traditional goals and modalities of operation. In the penal field, weak courts did not come to control the still despotic police nor come to legitimize the despotic prison bureaucracy.

At the crossroads of debates in the sociology of penality and of studies of the contemporary Latin American state, this study (i) contests and complicates macrostructural and impersonal models of penal change by focusing on the strategies of agents and organizations operating in morphologically distinct policing, courts and carceral fields; (ii) explains, combining evolutionary and diffusionists models of penal transformation, the new orientations of penal bureaucracies and the novel morphologies of the reconstituted penal fields after the retreat of the military from controlling criminal justice institutions during dictatorship; (iii) accounts for the variations across countries, questioning narratives of institutional penal convergence in contemporary Latin America, and (iv) contributes to an understanding of the material and symbolic role of the penal apparatus in the post-authoritarian Latin American southern cone states and societies.
TO MY FATHER
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List of Acronyms and Abbreviations

Carabineros: Carabineros de Chile, national state police force of Chile.
BPP Boletín Público Penitenciario, Internal Bulletin, Federal Penitentiary Service (Argentina)
CELS: Centro de Estudios Legales y Sociales (Argentina)
CESC: Centro de Estudios de Seguridad Ciudadana, Universidad de Chile (Chile)
CIAPPEP: Curso Interamericano de Preparación y Evaluación de Proyectos (Chile)
CNI: Central Nacional de Inteligencia, National Intelligence Central office (Chile)
DINA: Dirección Nacional de Inteligencia, National Intelligence Directorate, (Chile)
DISPI: Dirección de Seguridad Publica e Informaciones (Chile)
FLACSO: Facultad Latinoamericana de Ciencias Sociales (Chile)
FPC: Fundación Paz Ciudadana, right wing think tank (Chile)
Gendarmería: Gendarmería de Chile, Prison Directorate of Chile
GN: Gendarmería Nacional, federal government constabulary police force, (Argentina)
I.O.: Internal Order, Orden Interna, PFA
Investigative Police: Policía de Investigaciones, Criminal investigations police of Chile
MP: Ministerio Público, Public Prosecutor’s Office
PFA: Policía Federal Argentina, federal government metropolitan preventive and investigative police and national political policing police
PJ: Partido Justicialista, populist party, created by General Juan Perón
RC: Revista de Carabineros, the house-organ of the Carabineros, published since 1927 (Chile)
R.O. Reserved Order, Orden Reservada, PFA
RPP: Revista Penal y Penitenciaria, house organ of SFP, published since 1933 (Argentina)
SPF: Servicio Penitenciario Federal, Federal Penitentiary Service (Argentina)
UBA: Universidad de Buenos Aires (Argentina)
UCR: Unión Cívica Radical; center liberal middle class party (Argentina)
USAID: United States Agency for International Development
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If at times writing a dissertation feels like a solitary peregrination, searching for data and making infinite decisions about our research problem, site after site, paragraph after paragraph, and chapter after chapter, the truth is that much of the time those minute, sometimes imperceptible, advances are possible only thanks to the presence of friends, advisors, colleagues, institutions, family members and loved ones, who support us in myriad ways. That means that I have many people to thank for making this study possible and for allowing me to go through this wonderful journey at Berkeley.

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Chapter 1
Introduction: Explaining the different evolution of post-authoritarian penal states in the southern cone

“[T]he sociologist has always been the bad guy in the story: he is the one that disenchants, the killjoy; the one that does not celebrate democracy, but that questions its social uses, not always very democratic, that could have been built on the basis of the idea of democracy. And that is the intention of this discourse.” (Bourdieu 2005a:11)

[Synopsis chapter one]

In this introductory chapter I present the central problem—to explain the contents of demands for reform of the core criminal justice bureaucracies in Argentina and Chile after the end of dictatorship, to account for the changes in these bureaucracies’ official goals and practices in democratic times and to explain the ensuing reconstitution of the penal sector of the state. In this introduction, I present a succinct description of penal bureaucracies before, during and after dictatorship, the contents of these demands for reform, and the different outcomes in terms of the evolution of these bureaucracies and the reconstitution of the penal sectors of the state. While in Chile the police and the criminal courts bureaucracies changed according to reform goals, the prison in Chile, and the police, criminal courts and prison administration of the federal government of Argentina did not alter their mission and operations in line with these proposals. After describing these divergent outcomes, I discuss the empirical parameters and theoretical purposes of the study. I propose an analysis of change that is both evolutionist and diffusionist, in that it takes into account the previous stages of these bureaucracies, their historical relations with the central government, and the selective incorporation of new models and internationalized professional expertise. To explain change as well as continuity, I deploy a comparative-historical bourdieusian field theory account, locating these bureaucracies at the center of the policing, criminal courts and carceral fields. This approach allows me to explain the empirical variation among post-dictatorship penal sectors of the state of Argentina and Chile, as well as the differential impact of novel penal expertise within the common expansion and exaltation of the penal state in Latin America. It also provides a better explanation of penal bureaucratic change than those provided by Garland, Foucaultians, and institutionalists within the sociology of penalty. Finally, it enriches the political sociology of the Latin American state, encompassing within the analysis of bureaucratic reform not only the interests of government, experts and political elites—the usual focus of the literature on bureaucratic change—but also the interests of bureaucrats and the dynamics within and between bureaucracies. The field theory perspective of organizational change also addresses and solves limitations of the historical institutionalist analysis of bureaucratic transformation. In closing I discuss the comparative design, the methods and the data I draw on.]
1.1 Understanding the evolution of penal bureaucracies in democratic Argentina and Chile

The past decade has seen a resurgence of academic interest in penal policies and institutions. The new sociology of penality challenges our assumption that changes in penal institutions are mere reactions to changes in crime, pointing instead to the complex institutional, ideal, and socio-political factors involved in the transformation of penal bureaucracies (Garland 1990; Simon 2007; Simon and Sparks 2013; Wacquiant 2009b; Young 1999). This shift in theoretical focus has coincided with dramatic transformations in the penal sectors of countries across the world. While the penal bureaucracies of Western Europe and the US have received privileged analytical and empirical attention, other regions of the world have seen equally profound transformations. For instance, a huge wave of penal reform hit Latin American states in the 1980s and 1990s (Bailey and Dammert 2006; Fruhling 2003; Hammergren 2007; Ungar 2002). The reforms were especially spectacular in the southern cone. Since transitioning to democracy (1983 for Argentina, and 1990 for Chile), the police, courts, and prisons have not only expanded their clout, but also incorporated new models and policies. Some of these new ideas were imported from abroad; others were transposed from separate local policy arenas; some ideas were even recovered from within the countries’ own penological traditions. The reforms mobilized and combined almost the exact same models to rebuild the penal sectors in the name of “democratizing” them (Bailey and Dammert 2006; Dammert 2006; Duce, Riego, and Vargas 2005; Sain 2002; Sozzo 2011). Furthermore, penal bureaucracies in the two post-authoritarian countries evolved in very distinct directions from each, despite being subject to similar programs.

The pre-democracy federal criminal justice systems of Argentina1 and Chile were quite different in their goals and operating modalities from those of today. Each of these criminal justice systems, which together are responsible for public order at the national level and law enforcement in the largest metropolitan areas,2 has taken its own unique path of change (even if reform programs were initially similar). The differences between Chilean and Argentine police and criminal courts administrations are enormous, while prison administrations in the two countries have evolved along more similar paths since the transition to democracy.

1 Hereinafter, when I refer to Argentina, its criminal justice, its police, courts or prisons, I am referring to the federal level administration and penal bureaucracies. These penal bureaucracies include the federal police forces referred to in this study, namely the Federal Police, and the National Constabulary (Gendarmería Nacional), the federal criminal courts and prosecutors officer and the Federal Prison Service. In the case selection and methodology section I discuss why I am focusing in the federal level government of Argentina, and not studying provincial cases. Chile is a unitarian regime, with two police forces, the Carabineros de Chile, and the Investigative Police, a unified courts and prosecuting system and a prison service, Gendarmería de Chile, that encompasses prisons and jails. The Chilean criminal justice system is part of the national administration, which monopolizes police, criminal courts and prison administration.

2 The national police, criminal court system and prison service of Chile are also in charge of the metropolitan area of capital city of Santiago de Chile (circa 5,000,000 in 1990, over a population of 16,000,000). The federal justice system of Argentina has jurisdiction over the whole national territory for federal crimes and intervenes in cases of federal and common crimes in the federal district of Buenos Aires..
Right after the transition to democracy, a wave of reformist demands emerged. These aimed to change the police, criminal courts and prisons administrations in very specific directions that deviated from the trends dominating advanced capitalist countries at the time. Police reform programs driven by the central government in Santiago and Buenos Aires were similar: They centered around promoting a new mission for the police, shifting from a framework of “national security”—oriented towards “defend[ing] the institutional order and authorities” and counterinsurgency—towards one of “citizen security,” assuring “personal security, protection of property and goods, and upholding the rule of law” (Dammert 2006). Besides liberal reforms, these new policy ideas also included the adoption of very specific deployment styles, incorporating managerially oriented “methodologies that evaluate the impact of policing strategies on crime” (Mark Unger 2006) the co-production of citizen security through community involvement and community mobilization in different modalities of “community policing” (Blanco 2005; Fruhling and Candina 2004; Lunecke and Candina 2004), and public accountability routines.

The reforms proposed for the criminal courts consisted of “new criminal procedure codes that replaced written procedures with procedures based on oral hearings, transferring investigative functions to prosecutors (fiscales) created for that purpose (ministerio público)” (Correa Sutil 1999; See also Langer 2007a). This involved setting up a new division of labor within the courts, whereby prosecutors investigated and judges adjudicated (instead of judges both investigating and sentencing as it was in the so called inquisitorial models). The reforms plans also incorporated the addition of grand public defense services.3 In the prison arena, the democratic era reformers in Argentina and Chile flew in the face of the regional tendency to increasingly use prisons as warehouses (Muller 2011a). Instead, these reformers demanded a return to a rehabilitation paradigm, which was combined with protection of inmates’ human and legal rights (Riego 1990, 1993; Sozzo 2011) and an increased reliance on alternative non-custodial measures (Asociación de Política Criminal 1991a). Two decades and a half after the transition in Argentina and a decade a half after the transition in Chile, we find that the police and the courts have evolved very differently in each country, while the goals and modalities of operation for prisons converged.

These differences in bureaucratic evolution, which I describe next, are puzzling if we consider what the two countries shared as they transitioned to democracy. Both had polities with a strong interest in human rights, both attempted massive administrative reform, both saw property crime rates increase—duplicating in Chile and tripling in Argentina between 1970 and 2000—and both saw crime and insecurity become central political problems after the transition to democracy—all features directly associated with changes in the police and courts (see Hinton 2006; Uildriks 2009). The divergences are

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3 The passage from an inquisitorial to an accusatorial-adversarial criminal procedure means a change in the contents and agents that direct the criminal process. The inquisitorial process is divided into two stages: a more secretive pretrial investigation, and a verdict and sentencing phase, both structured around the incorporation of proofs and allegations in a written dossier that the judge will use to sentence. In the adversarial system the prosecutor and defendant contend before an impartial judge, written instances are reduced—with written dossiers only in the first stage. The prosecutor here directs the preliminary investigation, accuses, and can negotiate, through plea bargains, the accusation and charges (J. Correa Sutil 1999; See Langer 2007a).
even more paradoxical in light of the democratic central government in each country having had promoted the same police, courts and prison reforms. Despite this fact, the reforms were implemented in Chile only within the police and the criminal courts—where the democratic central government had almost no control of appointment and direction—but not in the prisons. In Argentina, neither the police, the courts, nor the prisons—bureaucracies where the central governments had almost total at the moment of transition the reforms—were also discontinued and the police, courts and prisons where not transformed in the line with the reform models.

Indeed, the penal bureaucracies that incorporated the reform models were the police and courts of Chile, which elected authorities did not control after the beginning of democracy. After Pinochet was unexpectedly defeated in the 1988 plebiscite to renew his power and Concertación de Partidos por la democracia (hereinafter Concertación) won the 1989 open elections for president, elected president Aylwin found himself facing a closed Supreme Court and judiciary, and having no practical control over the Carabineros. The authoritarian regime had imposed a protected democracy allowing the former military, police, judicial and economic elites to reconvert their power within the democratic political field. The democratically elected president controlled the prison administration. In Argentina, the transition to democracy in 1983 resulted from the implosion of the military government—following their defeat in the 1982 Falkland Islands war and an economic crisis—rather than from a victory of civilian contenders for power, as was the case in Chile. The Argentine state fell into the hands of a weak civilian opposition (Stepan 1985), organized around the centrist UCR party and the populist Partido Justicialista (PJ). The first president, Alfonsin, rapidly took control of the police and prison administration, designating new police chiefs and prison directors as the military returned to the barracks. Elected authorities even reinstated around 70% of the judges, who were confirmed by the president and senate. The police, courts, and prisons of Argentina, and the prisons in Chile—collectively the bureaucracies that authorities controlled at the beginning of democracy—were the institutions that changed the least throughout the democratic reform process. Before presenting my argument for how to solve these paradoxes, we must first see how these bureaucracies evolved under democracy.

From counterinsurgency machines to policing enterprises in Chile, and back to police corporations in Argentina

In a single decade after the transition to democracy, the Chilean police forces were transformed from institutions of counterinsurgency to policing enterprises—defining themselves as efficient providers of policing services to citizens and institutional

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4 Four days before President Alwyn got into office, the police obtained a new general police ordinance securing its bureaucratic integrity and independence: it gave the general police director power for eight more years, gave him the monopoly over designations of high officers, deployment; incorporation, careers, and social benefits, and prohibited reducing police.

5 The 1980 constitution created a National Security Council composed by members of the military and Carabineros and a minority of civilians, including two members designated by the Supreme Court: established that former chiefs of the Army and the police would become "appointed senators" and put in place a voting system that promoted an overrepresentation of right wing parties in the senate.
consumers. Meanwhile, the Argentine federal police forces returned to their corporatist traditions and methods of old.

The Chilean police forces—the constabulary police, the Carabineros (the largest force, covering preventative policing for the whole national territory), and the smaller Investigations Police (responsible for detective work and historically with a tenth of the Carabineros personnel) went from being completely permeated by the counterinsurgency logic during dictatorship to become managerially rationalized organizations that provide police services in a way that emulates private enterprises. Both the Carabineros and the Investigations Police were created in the 1920s. Between the 1930s and 1970s, the Carabineros became a highly professionalized and coherent force in charge of rural, urban and public order, as well as crime prevention. The Investigative Police remained in charge of criminal investigations and identification services, while also involved in political intelligence. During the dictatorship (1973-1989) they were involved in repressing political insurgency and opponents to the regime, whereby they engaged in systematic abuses, torture and illegal detentions (Policzer 2008), repressing protests, raiding poor neighborhoods (Colectivo Memoria Historica Domingo Cañas 2005; Paley 2001:73–74) and disarming political groups. The Carabineros’ General Director was even a member of the military junta, while the Investigate Police was led by a retired army general. After the transition to democracy, the General Director of the Carabineros retained legal control over careers, internal structure and deployment decisions.

By 1998, after less than a decade of democracy, the Carabineros de Chile and the Investigative Police had left behind their politically repressive views, and had embraced new reform models and rationales, including the novel doctrine of “citizen security,” in the name of which they progressively reduced police violence and abuse of citizens. Internal administration and deployment began to follow managerial models such as “project evaluation techniques” as well as “community policing” schemes (Carabineros 2005; Lunecke and Candina 2004). In the new “Strategic Plans” of 2001-2005, the Carabineros elites declared that their aim for that period was to “increase institutional efficiency, to augment the opportunity and quality of police services to satisfy the demands of users, and to strengthen relations with the community” (Carabineros 2005:12), while the Investigative Police declared in 2005 that its “corporate mission,” was now centered on “a new disposition to be controlled by the executive authority, legislature and the judiciary, and a responsibility before the community.”—with a private-enterprise logic of “quality services” to their “users (citizens, prosecutors, judges and the administrative authority, providing a scientific and technically qualified service, appropriate, to be delivered in time and adequate to the demand, on the basis of improving standards of efficiency and efficacy” (Herrera and Tudela, 2005: 171). These

6 Police killing went from 17 injured by shootings in 1992 to 4 in 1999 and about one police homicide per year or less during the 1990s (Claudio Fuentes 2005:31) These numbers differ greatly from those of the Federal Police of Argentina—48 illegal killings in 1993 and 71 in 1999 (Fuentes 2005:19)These statistics are for the metropolitan region, and not for the whole country. In the policing of indigenous political movements in the south of Chile, police violence and killings are higher.

7 According to the 1998 Plan Cuadrante (Beat Plan) new “beats” are drawn by “police experts,” taking into account geographic and crime criteria. The officer in charge of a beat actively patrols and attempts to interact with the inhabitants of his beat, who may reach him at his cell-phone number anytime. This plan incorporates formulas to determine the allocation of resources following changing crime patterns and security services demands (Foro de Expertos 2004:109–119).
changes took place in the Carabineros over a period where the central government could neither legally remove the director nor control the budget, careers or designations.

In Argentina, the large Argentine Federal Police—historically a civilian police force in charge of political policing at a national level and of crime prevention and investigation in the metropolitan area of Buenos Aires—and the smaller National Constabulary—traditionally a border patrol force, but also in charge of riot control throughout the national territory—were under military control during dictatorship and were involved in political repression as part of the crusade against “subversion.” Two decades after the advent of the democratic era, these forces abandoned the counter-insurgency and national security doctrine, but did so only to return to the traditional state police doctrine—centered on protecting authorities and public order (Pelacchi 2008; Salles Kobilanski 2012). The Federal Police preserved its traditional zoning scheme and its commando-style interventions in critical areas (Tiscornia 2004). “Community policing” programs, aimed to mobilize and integrate the community so as to gather information while responding to the local citizen demands, were temporarily adopted in 1995 (Eilbaum 2004), only to be rapidly discontinued starting in 1998. It has been replaced by harsh public-order maintenance, accompanied by a steady increase in corruption and killings (Sozzo 2002). The National Constabulary retained its corporatist vision and its militarized orientations, and it continued repressing protests during the 1990s, defining itself as “soldiers of the law” (Carlson 2004:78). These forces that have been under control of democratically elected authorities are precisely those that changed the least in their mission and modalities of operation regarding legality, community orientation, and public accountability.

The courts of democracy: from dictatorship accomplices to prosecuting and sentencing enterprises in Chile, and back to an atomized judiciary in Argentina

Argentina passed a new criminal procedure law in 1992 and constitutionally recognized and regulated a new independent prosecutor’s office in 1994. Chile created a new prosecutors’ office and passed a new criminal procedure law in 2000. However the new Argentine “mixed code” left the previous structure of dominant judges and weak prosecutors intact; it also preserved the written basis of the procedure.9 In Chile, by contrast, the new law created a totally new division of labor that gave a dominant role to the newly created prosecutors’ office, where the general prosecutor directs an

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8 The programs of “community policing” consisted in monthly meetings with community leaders and neighbors in the different districts of Buenos Aires aiming to getting closer to the community, receiving their demands and promoting citizens feedback (See Eilbaum 2004).

9 Both the Federal Judiciary of Argentina and the judiciary of Chile are divided in hierarchies and specializations (fueros). They are composed by a Supreme Court, first instance-courts (juzgados), oral tribunals (tribunales orales) and appeals courts (cámaras). Each tribunal has jurisdiction over certain specializations (fuero). These fueros are: administrative law (Fuero Contencioso administrativo), civil and commercial law (Fuero Civil y Comercial Federal), electoral law (Fueron Electoral), and criminal law specializations. The criminal law courts and tribunals have jurisdiction over common crimes in the city of Buenos Aires, and over federal crimes in all the territory. In the city of Buenos Aires, the common crime jurisdiction is divided in minor crimes courts (Juzgados correccionales) and crime courts and tribunals (Juzgados and Cámaras del crimen). I am studying the special procedure that regulates criminal investigation and adjudication in the courts specialized in criminal matters.]
independent prosecuting administration that dominates criminal courts’ work, directs investigations and controls the police. In Argentina, the reform led to a weak, atomized and inefficient criminal judiciary, while in Chile the new regulations produced powerful and hyper-efficient prosecuting and sentencing bureaucracies imbued with the principles of due process and efficiency—what I call prosecuting and sentencing enterprises.

Argentine courts have been weak since at least the 1930s, continuously penetrated by the executive branch, which decided careers and controlled federal criminal judges. These politically controlled judges were judicially powerful, controlling investigations and adjudication. They dominated the body of prosecutors, who were highly atomized and dependent on the Executive branch, since the lack of possibility for tenure meant they could be removed from their position at any point in time. During the last period of dictatorship (1976-1983), criminal courts continued to be responsible for common crime, and only secondarily responsible for political crime and prisoners, who were mostly left to the executive branch (Zamorano 1985; Pereira 2005). Pro-regime judges systematically rejected habeas corpus for political detainees. After transition in a process that began in 1985 and finished in 1992, the legislature and the executive branch ended up passing a half-baked reform inspired by an “accusatorial criminal procedure” model that kept mostly written instances and rites organizing investigation and sentencing (instead of one based on oral hearings). The act of 1992 also preserved the power of judges, and established subordinated prosecutors which remained atomized and subordinated to the traditional investigating judge, and dependent on the police for inquiries (Arduino 2005). After the reforms of 1992, the criminal courts, in general, remained highly inefficient, with a very low output that preserved the same durations of trials and the same proportion in prisoners of remand of circa 60% than before the passing of the reform laws. In 1994, even if the prosecutors’ office became an independent organization recognized by the Constitution, it has remained functional subordinated to judges, with half the personnel and resources than criminal courts.

In Chile, criminal courts had also been historically weak, even if they were less completely penetrated by political intromission as of the 1930s. Still, they remained bureaucratically weak between the 1930s and 1970s (Hugo Fruhling 1980). During the dictatorship between 1973 and 1990, court personnel kept their tenure, but courts were increasingly filled with military-regime acolytes—the Supreme Court was one of Pinochet’s main political allies. As in Argentina, judges had been traditionally the most powerful figure in the (weak) criminal courts, controlling both investigation and adjudication. There were no prosecutors in criminal cases before the 2000s reform. These historically weak courts never captured more than 0.25% of the budget between 1930 and 1990. Criminal courts in Chile, just as was the case in Argentina, were highly inefficient, with long trials and chronically high proportions of pre-trial detainees in prison (around 50% of inmates). With the passing of the new criminal procedure reforms in 2000, its implementation between 2000 and 2005, and the creation of the public prosecutor’s office, judges were displaced from their central position in the criminal courts’ division of labor. They found themselves in warranty courts for securing the rights of defendant, or as sentencing judges who mostly rubber-stamp agreements between prosecutors and defendants. In the new system, the prosecutors were the main players, controlling the investigation, controlling the police, and determining sentencing in practice (through agreements with defendants, which constitute 97% of sentences under the new system).
The new criminal courts and the prosecuting office now captured around 1% of the budget. Furthermore, they were imbued with a logic of formal due process and efficiency that dramatically increased investigation, accusation and sentencing capacities. Between 2005—when the new criminal reform was fully implemented—and 2010, the new criminal courts organization’s output reduced pre-trial detainees from 60% to 24%, while it increased the number of sentences by a factor of 10. In less than a decade, the highly conservative and inefficient court system had become the regional benchmark for criminal courts and prosecuting.

*From militarized prisons under dictatorship to warehousing prisons in democracy*

If the Argentine and Chilean police and courts evolved in opposite directions after transitioning to democracy, the Argentine and Chilean prisons had convergent evolutions. Under the dictatorships, prisons focused on internal order, and when they failed to return to a rehabilitation model after transitioning, prisons became used exclusively for incapacitation. In both countries between the 1940s and the late 1960s, a (weak) correctionalism developed under the direction of civilian personnel and penitentiary officers. This correctionalism was based on classification and on treatment through vocational training and education. However, during the dictatorship in Argentina, military officers directed the prisons, and they erased any trace of rehabilitation and correctionalism, instead focusing on escapes and internal order. Political intelligence became preeminent, and it replaced rehabilitation in discourse and practice (Zamorano 1983; García 2004). Under the Chilean dictatorship, the military officers that directed the prison preserved the (weak) correctionalist philosophy, but the military logic of pure custody and security ultimately prevailed in practice, and despotism greatly increased.

After the return to democracy in 1983, the Argentine federal prisons where placed back into the hands of civilians, who initially promoted rehabilitation programs and “human rights standards.” However, the prison administration, still controlled by military-minded officers and staff, gradually veered toward endorsing incapacitation, and prison protocol became fully focused on preserving internal order (CELS 2005a). The Chilean prison system was also placed under civilian control, and there too attempts were made to revive the “rehabilitation model” that would fulfill “human rights” standards. However, Chilean prison policies veered toward incapacitation as half the facilities were privatized, keeping at bay liberal human rights activists (Gendarmería 2006). In both cases, the prison populations increased dramatically. In Argentina, the federal prison population expanded from 3,000 inmates right after transition to 6,000 in the late 1990s; it ballooned to 10,500 in the late 2000s. In Chile, the inmate population increased much more, from 25,000 in 1990, to 33,000 in 2000, and 53,000 in 2010. This trend represents a change in the incarceration rate from 140 per 100,000 at the beginning of the transition, to 325 per 100,000—the highest in all of Latin America—two decades later.

As a result of these changes in Chile, the formerly authoritarian police, courts and prisons evolved into an enlarged and managerially and judicially legitimated criminal justice system, where reformed and panoptic police forces became dominated by highly efficient criminal courts. This reformed criminal justice system was legitimated by novel “managerial modernizations” and due process standards for police and courts. By extension—as a result of the increase in the number of convicts—imprisonment was also
legitimated. These managerially modernized bureaucracies now provide police, judicial and even prison “services” to their client-citizens, thereby constituting and reinforcing the atomized market citizen of neoliberal Chile and legitimating control over marginal groups. In this renovated penal field successful new experts, who participated in the criminal procedure and police reform process, became key players in penal policy-making in the early 2000s, leading to a policy-making modality I call technocratic punitivism.

Post-transition Argentine penal bureaucracies evolved in their mission and deployment modalities, but in different directions than those taken by Chile. Here the formerly militarized penal state—deeply coalesced under military control and symbolic regimes—evolved into a more atomized penal institutional arena, less symbolically integrated than it was under the military. At the same time, after reforms for greater accountability in the police, for greater efficiency in the courts, and for greater emphasis on rights and rehabilitation in prisons were discontinued in the late 1990s, the criminal justice system became increasingly despotic, punitive, and violent. The failed reforms in Argentina had prevented the involved experts from gaining authority within the general penal policy-making process. As a result, penal policy-making in Argentina has evolved toward penal populism since the late 1990s, increasing imprisonment rates. These highly despotic and unaccountable penal bureaucracies became even more illegitimate in the eyes of the citizenry.

Despite having knowledge of the very specific and paradoxical paths taken by penal bureaucracies in democratic times in each country, as well as of the very peculiar content of the reform demands, we still do not have empirical studies that adequately explain why these “democratizing” reforms emerged. We also do not know how the structures of the post-authoritarian criminal justice systems, with their different political terrains and institutional complexes, interacted with the attempts to introduce these policies meant to change the bureaucracies and recompose the criminal justice system after the transition to democracy. In this study I explain the specific contents of the reform demands, and reconstruct the transformations of the core penal bureaucracies of the state in neoliberal and democratic Argentina and Chile. I explain how the police forces, criminal courts and prisons changed their mission, their functioning and their inter-relations after the dictatorships. Finally, I show how the convergence of these relatively independent processes produced differently reconstituted penal states in each country with different morphologies and distinct material and symbolic effects.

To understand these peculiar but divergent post-transition evolutions of the penal arena, I investigate the following two questions:

(a) Why did such specific demands to reform criminal justice administration organizations emerge after the political transitions to democracy? and

(b) What factors explain the diverging paths of these penal bureaucracies under democracy, and the differential reconstitutions of these penal fields in relation to reform programs?

In other words, why do we see a surge of demands to change the penal bureaucracies after the transition to democracy, what explains the content of these demands, and how
have these bureaucracies changed in relation to democratic-era reform programs, producing in turn differently reconstituted penal arena? These questions, simple as they may seem, reveal major analytical and heuristic voids in the recent literature on penal change in Latin America.

1.2. Beyond self-evident “democratization” reform and common trends: explaining penal-bureaucratic change through a comparative study of penal fields

To explain the peculiar content of reforms and their paradoxical outcomes, we must leave aside the commonsense inclination to see the reform process as linear, where authorities apply solutions to perceived public problems, implementing the most rational or legitimate administrative change and then making secondary adjustments as necessary. To understand reform programs’ contents, emergence and impact on bureaucratic change, we need to situate reform programs within ongoing struggles that take place in and around the penal sectors of the state—namely, the policing, the criminal courts and the carceral fields concerned with defining police, criminal courts and carceral policies and priorities.

This perspective challenges the most common explanation for the contents of reform, namely that they were technically needed measures implemented to better control the street and violent crime that surged with the advent of democracy and the neoliberal economic structural adjustments (Duce and Perdomo 2003; Fruhling 2003). The first problem with this argument is that although crime rates may increase, this alone is not sufficient to explain a demand for changes in how penal control is organized. A struggle-based account also brings into question a second competing explanation for penal reform, which sustains that reforms are linked to a broader shift from authoritarianism to democracy (Binder 1991; Duce et al. 2005; Riego 1998). This is the thesis prevalent among political scientists and legal scholars (Langer 2007; Ungar 2006). However, this approach has many problems. First, similar reforms have been initiated in other Latin American countries (such as Costa Rica, Mexico, Venezuela, and Colombia in the 1980s and 1990s) in the absence of a transition to democracy from authoritarian regimes (see Bailey and Dammert, 2006 for the police; and Langer 2007 for the criminal courts). Second, it does not explain why these particular policies and programs are the ones that fit a democratic regime. The specialized literature on police, criminal courts and prison reform (Bailey and Dammert 2006; Fruhling 2003; Hammergren 2007; Ungar 2002) takes for granted the contents of these reforms programs—as if “community policing”, an independent prosecutor, or “prison treatment as a human right” would naturally correspond to a “democratic” criminal justice system in Chile, Argentina or anywhere. In doing so, this literature obscures the role of expert-reformers who, by favoring certain policies over others, shaped the evolution of penal bureaucracies according to models that might appear arbitrary to an outside observer. Here, just as scholars of penal change in other latitudes have argued (Cohen 1985:5; Garland 1985, 2001; Wacquant 2009a), it is essential to reintroduce the role of the professional expert reformers into the center of the scene to explain the emergence of reform demands and the specific directions proposed. In this respect, we need an account of the emergence of this transformation and its impact on the transformation of penal bureaucracies.
However, it is not enough to account for the reform proposals, as they did not directly produce changes themselves, as we can surmise from the difference in paths taken by penal bureaucracies under democracy. It is exactly such an explanation of the divergence in evolution of local penal bureaucracies that is missing from the recent sociological literature on Latin American penal states (Iturralde Sanchez 2010b, 2012; Muller 2011a, 2011b; Snodgrass Godoy 2005). Studies on Latin American penal bureaucracies drawing on late-modern or neoliberal penal state formation appear not only to be oblivious to institutional change and variations across Latin-American countries, but instead advance an analysis where bureaucracies remain substantially unchanged. Late-modernist accounts describe continuities of traditional (authoritarian) traits in the penal arenas, with a convergence toward greater authoritarianism across the region described as a result of neo-conservative politics and structural changes in the economy and society (Iturralde Sanchez 2010b:48). Meanwhile, works following Wacquant’s thesis on Latin American neoliberal penalty (Muller 2011b; Iturralde Sanchez 2012) also gloss over the varieties of emerging penal bureaucratic arenas and focus on the common “exaltation of the penal apparatus” that consists mainly of greater police control, more discriminatory justice, and more intense imprisonment targeting excluded urban sectors (Muller 2011). These works not only leave out qualitative changes and differences across countries, but also imply a thesis of convergence. In their view, the neoliberal structural adjustments and ensuing criminality reinforces the traditional despotic and discriminatory features of the Latin American penal bureaucracies. The few changes they refer to derive from the importation of US-made policies and slogans—zero-tolerance or the war on drugs (Muller 2011a:63; Wacquant 2008). In these perspectives, the traditional violence, discrimination and informality of the criminal justice system increases under the pressure to produce business-friendly cities open to investment and urban development; this leads to politically fuelled penal populism and the internalization of the war on drugs (Muller 2011a:61-65). Again we are left without an account of the veritable transformation in these bureaucracies.

I propose a comparative historical approach that combines “evolutionary” and “diffusionist” models of penal change (Wacquant 2009a:173), where I dissect the transformation of these bureaucracies within the penal subfields and the transformation of the fields themselves. To explain the specific content of reform processes we must overcome vague convergence narratives of change in late modernity and the corresponding analytical voids of neoliberal penal theory that only see continuity in the Latin American penal state, I propose a comparative historical study that combines “evolutionary” and “diffusionist” models of penal change (Wacquant 2009a:173) dissecting the transformation of those bureaucracies within the historically specific penal subfields and leading to an overall reconfiguration of those fields. I dissect the evolution of these penal arenas, not as corresponding to “societal stages,” but out from previous stages of those local penal bureaucracies impacted by changes in the political arena derived from the transition to democracy in contexts of neoliberal state-making.

To explain the differences in evolution of the Chilean and Argentine penal bureaucracies after transition, I resort to the theoretical concept of field (and subfields) and construct an analysis in terms of penal (Page 2013), policing, criminal courts and carceral fields. These concepts allows me to explain both the emergence and elaboration of reforms in democratic times as well as their differential impact on penal bureaucracies
and the overall reconfiguration of the penal fields after the retreat of the military. Within these penal fields—located at the intersection of the bureaucratic, legal (Bourdieu 1987, 1992a) and political fields (Bourdieu 2001), and neighboring the academic, journalistic and economic fields (Bourdieu 2005b)—agents and organizations vied for authority over “democratic” penal bureaucracies and the power to determine penal policies and priorities. These struggles occurred within the subsectors of the penal field: the policing, the criminal courts and the carceral fields, and their outcomes produced the specific evolution of each penal bureaucracy and the overall reconstitution of the penal fields. The field-based account of penal bureaucratic change I propose provides a powerful way of analyzing the interaction between politics, bureaucracies and experts. In particular, it allows us to explain the dissimilar evolution of penal bureaucracies in similar macro-economic contexts, undergoing similar increases in crime rates, and following almost identical rationalities of reform.

The emergence of reform proposals and demands after the transition to electoral democracy is directly related to the democratic transition that changed not only the political arena, but the relationship between the democratically elected executive branches and the penal bureaucracies. The transition to democracy also involved a redefinition of the relationship between penal bureaucracies and military bureaucracies, as the authority of military elites was suddenly devalued in the penal arenas upon their removal from the central government. The military bureaucrats had dominated the various penal bureaucracies throughout dictatorship. From this perspective, the end of the dictatorial regimes produced a massive and sudden devaluation of the military authority not only over the political field but also over the bureaucratic field and within it, over penal policies and priorities. At the same time the end of struggles between the civilian opposition and the authoritarian regime produced the proliferation of expert-reformers in the penal fields. Human rights activists, who had been fighting the military regime, were left without a cause after the transition to a democratic regime. Meanwhile, the professional groups who had access to the state during the dictatorship—in particular, the monetarist economists and managers—were expelled from government. Both groups had to reconvert their authority, and so exploited the “crisis of transition” in order to invest their political or expert capacities in the penal field. These professional experts were aided in strategies by the recently elected authorities over the penal bureaucracies.

A case in point are human rights activists—like those of Vicaria de la Solidaridad in Chile or CELS in Argentina—who after the inauguration of the democracy, tried to make themselves a position in the different sectors of the penal arena. Some invested in the police, while others invested in the criminal courts or in the prison. Other new penal experts (namely, the economists) came from professional sectors that had thrived during dictatorship, particularly in Chile. Still other experts represented old penologists, criminologists and legal scholars in the academy who returned to the penal arena after having been expelled or marginalized during the dictatorship. The political transition, with the retreat of the military from central government and internal order, provided opportunities for these professionals and experts to reconvert their academic skills and social connections accrued in the political arena, whether they had been fighting the dictatorship, working for the authoritarian government or were simply on a comeback from internal or external exile.
Some of the new experts, like the human rights activists, legal scholars and the economists, had international professional trajectories and reconverted their international credentials and contacts into the penal policy arena, becoming importers of penal policies they adapted to democratic times. For example, Hugo Fruhling, a Harvard Law School graduate of the late 1970s, was a human rights activist fighting the dictatorship and protecting political detainees at Vicaria de la Solidaridad—a Chilean church-sponsored human right’s NGO created in 1975. He converted himself into a police reform expert a few years after the transition in Chile, introducing “community policing” discourses and models, which he had learned while studying counter-terrorist legal doctrine at Harvard in the early 1990s. Others had long trajectories within the criminal justice administration, government or academia, and brought with them revamped conceptions derived from the (weak) penal-welfarism of the 1960s, such as the criminal procedure expert we will meet in chapter three or the penologist and penitentiary experts we will meet in chapter four. Others, like professional economists, extended the work they had carried out while under the dictatorship, creating their own techniques and programs to become authorities on the police, court or prisons.

With the end of dictatorship and the rise of democracy in Argentina (1983) and Chile (1989), the government, experts, and elite bureaucrats started fighting over the general mission, workings and routines of the police, criminal courts and prison bureaucracies (Bailey and Dammert 2006; Duce and Perdomo 2003; Fruhling 1998; Hinton 2006; Pereira 2003a; Tiscornia, Sarrabayrouse, and Eilbaum 2004; Unger 2002). The transition to electoral democracy, the crime rate rise, and the later penal predilections of neoliberalism all provided opportunities for these agents to reposition themselves in the police, courts or prison fields. All these local experts not only facilitated changes, but determined the specific directions that the changes could take.

But elected democratic authorities (and their allied experts) encountered different types of police, courts and prison organizations, more or less docile to the new democratic administrations and demands, bureaucracies differently equipped with the capacity and recognized autonomous authority (bureaucratic autonomy) to confront the demands and interests of elected authorities. The differences in bureaucratic power and authority of the top-bureaucratic agents over policing, courts or prison derived from a long-term process that began before dictatorship and which I trace back to the 1930s. In turn, political agents became embedded in differently reconstituted party systems and with different substantive political programs and ideologies after transition participated in the reconstruction of the penal bureaucracies. The differences in bureaucratic autonomy, cross-party consensus, and stability in policy preferences regarding penal-bureaucratic reform led to the differences in evolution of these bureaucracies within each penal subfield. The differences in the power relationship between (more or less) autonomous bureaucracies and the elected executive branch, and the different position-takings of bureaucratic elites, political agents, and executive branch officers (depending on their control of the bureaucracies and the determinants of the party system), all interacted to determine different dynamics in the struggles over redefining the role and functioning of police, courts and prison. As a result, the police, courts and prison bureaucracies evolved differently.

These struggles and the ensuing outcomes took place with relative independence in the police, courts and carceral fields, but their converging outcomes produced a new
recomposition of the penal sector of the state in the two countries. In Chile, the criminal courts, which had been historically subordinated within the penal arena, acquired a central position after the 2000-2005 reform, subordinating the police and legitimating imprisonment within (still despotic) prisons. As a result, the Chilean penal state operates through its massively expanded police, criminal courts, and prison fronts—and not mainly through the prison, as Muller (2011) predicts in his characterization of the neoliberal state in Latin America. This expanded penal state, rebuilt upon models and rationales provide by Chilean economists and human rights scholars, produced a hyper-punitive penal state that citizens regarded as highly legitimate. In Argentina, as a result of the limited changes in courts and prosecuting bureaucracies, courts remained weak and subordinated to the executive branch. This penal state produced penal control by relying on highly authoritarian police forces, which fed an inefficient criminal courts system and highly despotic prison administrations. As a result, the penal state, has evolved between 1983 and 2005 from a military penal state to a police penal state—highly punitive and materially effective (in particular over marginalized populations), but ultimately symbolically illegitimate in the face of the citizenry.

1.3. Why does it matter? Theoretical and empirical contributions

This comparative historical field analysis that accounts for these different paths is important on empirical grounds and theoretical grounds.

Empirically, it is the first comparative reconstruction of Chile’s and Argentina’s contemporary penal fields, explaining the contents of reform, the evolution of the core penal bureaucracies and the recomposition of the penal field in the democratic period—the triple explanandum of this dissertation. Also, by theoretical necessity, this study extends the research backwards in time and laterally combines into the analysis different penal sectors that are usually treated separately in the reform-oriented literature. By going back to periods that preceded not only the present democratic era but also the military dictatorship I reconstruct a period that has received scant attention by the specialized literature and in particular in area studies more attentive to the role of the penal bureaucracies under dictatorship (Pereira 2003a; Policzer 2009) and democracy (Bailey and Dammert 2006; Hinton 2006; Sain 2002; Sozzo 2011; Ungar 2002). This historical excursus is essential to reconstruct how the development of bureaucratic interests and capacities were impacted both by the military dictatorships and the correlative expansion of the military over the penal realms, followed by a post-transition retrenchment of the military from internal order. This is all the more important considering the continuous intromission of military bureaucracies in internal order maintenance in Latin American penal bureaucracies, displacing not only police forces or militarizing them, but also controlling prisons as well as conditioning civilian courts or replacing them through military judicial commissions. This was certainly the case during Chile’s and Argentina’s most recent dictatorships.

The reconstruction of the period spanning the 1940s through the 1970s also allows us to trace the emergence of penal institutions and programs that reappeared in the mid-1980s and 1990s. These programs had been in place in the 1960s at the center of the state, and they determined part of the contents of reform policies at the time and after—i.e.: the progressive correctionalism or the criminal procedure reform focused on “due process” and oral hearings. That historical reconstruction also reveals that the basic
structure of that core relation within the police, courts and carceral fields—the relations between political agents and bureaucratic elites—gets defined very early on in the 1930s, as a result of the transition from authoritarian regimes into democracy in 1931 in Chile and in 1932 in Argentina. This long-term reconstruction also allows me to better explain how elite penal bureaucrats’ objective trajectories and dispositions determined their reactions to the central government’s attempts to modify penal bureaucracies after the transition to democracy in the 1980s and 1990s.

This study also expands our empirical vision laterally in that it encompasses the system of the core penal bureaucracies and the system of transformations in contemporary democratic times. This complex perspective, as opposed to the atomized approach of the criminal justice reform literature—which usually targets either the police (Bailey and Dammert 2006; Fohrig and Pomares 2004; Frughling 2010), the courts (Hammergren 1998; Riego 1998) or the prisons separately—is essential to understanding the dynamics in each sub-sector, and to reconstructing the structural transformation of the formerly militarized bureaucratic penal fields. With few exceptions, the literature on criminal justice reform unreflexively analyzes penal bureaucratic transformation independently, as if changes in courts would be irrelevant to changes in the police or in prison reforms (but see Ungar 2003). An integral approach is needed for two reasons. First, each of the penal bureaucracies is subject to the same political system, and usually the same experts and policy organizations have operated in the different arenas—at the same time or subsequently, extending their expertise and recognition acquired (or rejected) in one subarea to other ones. Second, the institutional evolution of each subsector impacted the others both objectively and symbolically. The massive expansion of the criminal courts and prosecutor’s office (chapter three) became an opportunity for the subordinated Investigative Police in Chile to gain power within the policing field in Chile vis-à-vis the Carabineros, capturing a greater portion of the expanded turf of investigations led by the new prosecutors. In Argentina, the limited reform of the criminal courts permitted the federal police to continue controlling pre-trial investigation and managing delinquency. These effects across bureaucracies are also symbolic. As I show in chapter four, the new criminal justice reform in Chile, independent in its origins and development from the struggles in the carceral field, increased the prison population. This development neutralized the position of those who, within the carceral field proposed returning to rehabilitation programs within prisons; but the increased proportion of convicts legitimated the expansion. In Argentina, the failed reform of the criminal justice system continued impeding the realization of any dream of return to rehabilitation; around 70% of inmates were under pretrial detention.

Theoretically, this comparative-historical study of the evolution of penal bureaucracies draws on and intervenes in several literatures, which I discuss next. To anticipate: I engage and enrich the sociology of penality by carefully dissecting the relationship between the political system and penal bureaucracies in order to explain bureaucratic change, as well as integrating in the analysis three core components of the penal field, accounting for organizational change and the structural reconstitution of two penal systems. I also enter into a dialogue with the sociology of Latin American states and politics, showing how the types of bureaucratic structures and variations in political systems conditioned the changes we see in penal bureaucracies. All the while, I place the
interests of the bureaucratic police, courts and prison elites at the center of the account, though they are usually sidelined by students of bureaucratic reforms.

1.3.1. Sociology of penality and bureaucratic change

In this work I deploy the concept of penal field and those of policing, courts and carceral fields to describe and explain the emergence of reforms, the differences in bureaucratic evolution and the reconstitution of the penal fields after dictatorship. This field theory account of penal bureaucratic change is critical to understand the interaction between politics, bureaucracies and experts, and to explain the differences in evolution of penal bureaucracies in similar macro-social contexts characterized by similar rises in crime rates and influenced by identical programs of reform. I follow Bourdieusian field theory, a recent theoretical strand within the sociology of penality (Page 2007, 2013; Wacquant 2009b) that integrates into the analysis the institutional structure that commands relationships between politics, bureaucracies and the changing populations and positions of experts, all the while placing socially constituted agency and strategy at the center of the account. This framework enables me to explain changes in penal bureaucracies and in the penal sector of the bureaucratic field arena while taking into account the interests of actors in relation to concrete positions within those penal subsectors, rather than in relation to an abstract problem of order, or as merely replicating the impersonal advance of rationalities or technologies of power.

Page (2013) defines the penal fields “as the social space in which agents struggle to accumulate and employ penal capital—the legitimate authority to determine penal policies and priorities. The penal field intersects the bureaucratic [(Bourdieu 1992b)], political [(Bourdieu 2001)], and juridical fields [(Bourdieu 1987)], and neighbors the economic [(Bourdieu 2005b)], academic and journalistic fields. It includes agents (people, groups and organizations) who participate in and affect these struggles that take place in this microcosm. The penal field contains various sub-fields, such as the field of policing, imprisonment, probation and parole. As with all such fields, those in the penal field, “have their own logic, rules and regularities” (Page 2013:74). But, while Page examines how a new organization (a prison officers’ union) impacts penal policies and the symbolic order of a carceral field, in this comparative historically work I use the concepts of penal, policing, criminal-court and carceral fields to describe and explain the internal changes in the bureaucracies and their new inter-relations as related to the mutations in the political sector of the field and the proliferation of new experts after the transition to democracy.10 From this perspective the penal field can also be defined as a space of the bureaucratic field where different agents and organizations, with different statist capitals—judicial powers, policing authority, incarcerating authority, military authority—and academic and political capitals compete over the authority to impose legitimate modalities and priorities of coercive state order maintenance over a territory. I first concentrate on the penal subfields constituted around each of the core penal bureaucracies: the police organizations, the criminal and prosecuting courts and the

10 I refer to the policing, criminal courts and carceral fields, as subsectors of the penal field. When I use the word subfields, I am also referring to one or all of these fields. The ensemble constituted by the policing, criminal courts and carceral fields constitutes the “penal field.”
prison. I then integrate these different transformations and describe how the overall structure of the penal field has changed in each country.

The penal field is located at the intersection of the bureaucratic field—itself internally complex and formed by ensembles of fields that legitimately regulate different areas of society, deploying different types of statist authority (from cultural authority, and social welfare, passing from judicial or taxing, monetary authority all the way to military authority)—the political, juridical and academics fields. Each penal subfield is thus constituted by the web of positions occupied by agents from the bureaucratic and judicial fields (the police, courts and prison bureaucracies and related officers), from the political field (the central government and parties, think tanks, activists)—and from the journalistic and academic fields. Within each field, we find historically specific bureaucracies, political agents and experts forming structurally and symbolically distinct arenas in each country before transition to democracy and in the context of the turn to neoliberalism. Each field is a regulated and structured space, which has “its own nomos, its own functioning principles and rules” (Bourdieu 2001), as well symbolic orders, whether they are highly contested (orthodoxies and heterodoxies) or not (doxas): national security or citizen security in the policing fields; constitutionalism or a state of exception logic in the judiciary; or liberalism or positivist penalty in the criminal courts; correctionalism or incapacitation penology in the prison arena, etc.

Penal fields and subfields are also structured spaces, or social arenas where field-specific capitals are relevant and differently distributed, especially between bureaucrats and political agents. In each subfield, elite penal bureaucrats may command more or less bureaucratized and professionalized penal organizations (with merit-based entrance, promotion, specialization and loyalty to office) with different levels of autonomous authority over the police, courts or prison policies vis-à-vis government (Carpenter 2000) or other bureaucratic field agents or organizations, like military or intelligence bureaucracies. Such penal-bureaucratically-based political capacities to decide on and intervene in the police, courts or prison policies may be legally sanctioned, publicly recognized, and backed by institutional capacities. Or, they might not be—as it was the case when the police, courts or prisons elite bureaucrats simply have no say in sector policies. Each penal organization will adopt specific position-takings, resisting or accepting the strategies of the extra-organizational agents (in particular, those of the executive branch). Besides political and bureaucratic-based authority, we find economic, academic and journalistic capitals, which have different rates of conversion into the policing, courts or carceral fields.

The distribution of the field-specific capitals determines positions of power and position-takings within penal bureaucratic subfields, and it shapes the struggles and strategies of the police, the court or the prison top bureaucrats, of political agents and experts, as well as different types of alliances among those agents and organization. As spaces of struggle, the policing, courts and prison fields are traversed by ongoing tensions where different types of agents try to advance their interests by modifying the existing definitions and legitimacy of penal practices. Besides intra-field tensions, changes in the economy and in the political arena operate as opportunities and conditions for agents within the penal subfields.

Reconstructing and analyzing the structure of relations between efficient agents, their trajectories and struggles within the policing, criminal courts and carceral fields which
are located at the intersection of the bureaucratic and political fields, I posit the following three hypotheses to explain the emergence of demands and the observed paths of penal bureaucratic change:

(a) The retreat of the military from the political and penal fields after the advent of democracy devalued militarized penal capitals and revalued alternative sources of political and expert authority within each field. Devaluation and valorization were, respectively, proportional to the distance of the competing agents from the retreating military. This opened a process of redefinition of relations among contenders for legitimate authority over penal policies and priorities;

(b) Specific reform models in each field emerged from the proliferation of new experts, activist-agents or professionals within each field reconverting their professional, academic or political capitals accrued before the transition to democracy to capital of authority on penal (police, courts or prison) policies;

(c) The change or lack of change in each bureaucracy resulted from: (i) the evolving balance of forces in the struggles between the historically differently autonomous penal bureaucracies and the democratically elected central government in each subfield and (ii) the continuity or oscillation of the policies of democratic central governments advancing over those bureaucracies after transition as determined by the properties of the reconstituted party system and dispositions of their incumbent.

I briefly explicate this last hypothesis. After the retreat of the military from the political arena and from the penal sector of the bureaucratic fields, which resulted from the inauguration of electoral democracy, the Chilean police and criminal courts were much more powerful and more autonomous from political agents than the Argentine police and courts had been at the moment of transition to democracy. The police’s and court’s greater autonomous authority paradoxically triggered more intense struggles between top-bureaucrats in the police and court and the central government, which led to changes in these bureaucracies. The objective relations inherited from the dictatorship (in terms of control of the executive branch over the bureaucracies), and the dispositions of occupants of those positions in each moment, determined the position-taking of the executive branch and top bureaucrats. In the case of the police, the highly autonomous Carabineros, led by ascending highly combative police management specialists, engaged and led an organizational self-reform processes to prevent the central government from controlling its budget, careers and deployment policies, and to preserve its legitimacy in the eyes of the citizenry after the symbolic attacks by experts and the executive branch during the first years of democracy. In the case of the criminal courts, the dominated executive branch invested its political capital and mobilized eager reformers (who were themselves dominated within the academic sector of the juridical field) to reform an objectively weak but subjectively recalcitrant judiciary, which had been dominated by the conservative Supreme Court since the dictatorship. By contrast, the lesser autonomy of the penal bureaucracies in Argentina and of the prison in Chile from political agents, as well as the greater docility of penal-bureaucratic elites, precluded the consolidation of the same initial reform in the police and courts and
spelled the defeat of rehabilitation programs in prisons. The differences in bureaucratic autonomy and the constitution of docile or resistant disposition of the top-penal bureaucrats predated both the transition to democracy as well as the military dictatorships.

Differences in the central government’s elites’ practices and in the consensus across parties on penal policies also impacted the evolution of reforms and their impact on these penal organizations. The platform-based, stable and consensual party system, as it emerged in Chile after transition favored the same reform programs in the police, courts and prison across successive administrations, putting constant and consistent pressure on the powerful police and courts, but also systematically orienting the prison bureaucracy toward a purely custodial prison (overrunning historical bureaucratic standards). In Argentina, the volatility of central government orientations and the polarization and instability of the new polarized and weak party system led to discontinuities in the reform programs, which were initially imposed over weak bureaucracies.

This field theory approach that integrates penal expertise, penal bureaucratic elites and political forces into the account of penal bureaucratic evolution overcomes the main limitation of its closest alternatives to explain penal change in similar social, crime and ideological contexts. In Weberian-Eliasian, institutionalist, and Foucaultian perspectives we find that the analysis of changes in penal bureaucracies encompassing the interactions between bureaucratic structures, politics, and experts are (i) usually more descriptive than explanatory, (b) privilege politics and experts to the detriment of bureaucratic interests, (c) make the analysis impossible by conflating the terms of the relationship, and (e) concentrate more on structures than on the situated and historically variant strategies of agents. I engage with these perspectives at the level of analytical distinction and heuristic mechanisms, and I show that studies that follow these perspectives to explain change in Latin American penal states reflect these theoretical limitations.

In his influential study of the recent transformations of criminal justice organizations in the US and UK (2001), Garland advances a Weberian-Eliasian account of penal bureaucratic change. In his Weberian moment, he takes into account structural differentiations, bureaucratization, and professionalization of criminal justice institutions (2001:32), later on describing the re-politicization of bureaucratic orientations and the displacement of traditional expertise. But, at the core of his argument, he posits that “new institutional arrangements originat[e] as problem solving devices [that] grow out of the practical experience of government agencies and their constituencies,” later on validated by cultural and politico-ideological contexts (2001:72,105, my emphasis). Such problem-solving responses are framed within a more general problem of high crime, whereby administrators and political agents follow either “adaptive” or “reactive” responses in an ideal-typical manner. Administrative actors—“driven by the need to keep the integrity of internal processes” and “adapting to the environment,” follow adaptive responses, while political agents “typically” “impassioned” and oriented to short-term electoral gains (2001:111-112) pursue reactive ones. While these are useful analytical starting points, as any ideal-typical model is designed to be, these types neither document nor explain the strategies adopted by concrete agents operating in specific penal domains. The problem-solving genesis of change, combined with ideal-typical reconstruction of action, appear as to be heuristic device for analysis rather than an explanation. Meanwhile, they become
obsolete when we find that bureaucracies are not as monolithic and internally coherent as Garland presents them to be and that political and bureaucratic agents engage in both “adaptive” and “emotive” policies, depending on their condition and position in the field. Moreover, in his perspective criminal justice agents continue oriented toward extra-field concerns, namely “to the predicament created by high crime, low state capacity and political vulnerability.” (2004:171) The analysis in terms of policing, courts field and carceral fields shows that agents act determined by more field-specific interests rather than primarily (re)acting to the general problem of crime. The concepts of policing, courts and prison field also allow us to better analyze processes to explain changes in the organizations of the criminal justice, an analyzes that is, understandably, missing in Garlands historical work (concentrated on structural outcomes), and which I argue are essential to explain the very different outcomes we observe the police and courts fields and the similar outcomes we observe in the carceral field.

If we were to follow Garland’s theory to explain changes in penal institutions in Chile and Argentina—as others have done (Gonzalez 2005a; Iturralde Sanchez 2010a)—we soon find problems in explaining cross-country variation, considering that both societies went through similar changes in the objective and cultural dimensions considered by the Late modernity narrative: major economic transformation, de-industrialization through the end of import substitution industrialization (Smith 1998), implementation of economic neoliberalism (Canitrot 1994; Silva 1993), greater inequality and urban segregation (Portes and Hoffman 2003; Portes and Roberts 2005), increase in crime rates and in the concern for crime (Dammert and Malone 2006; Kessler 2009), as well as an identity crisis among middle-class sectors (Svampa 2005). If we follow late modernity theory we are unable to explain why police, courts and prison bureaucrats reacted differently in the face of those similar extra-field contexts, and it becomes impossible to connect how the political cultures of Argentina and Chile “validated” very different policy developments. Garland and his followers do not tell us how to analyze these cases. I will argue that the field theory of bureaucratic penal change fills that void by pointing to the concrete interests that propel agents to engage in bureaucratic reform efforts and, depending on their positions, to fight, favor or reject those programs according to their interests within field.

Institutionalist accounts of penal policies (Barker 2006; Savelsberg 1999) have also focused attention on the specificities of the political system, the bureaucracy and the system of knowledge-producers in determining penal policies. Still, the institutionalist approach, as developed by these authors, proves to be limited when it comes to explaining the different evolution of penal bureaucracies in the cases at hand. While Barker (2006) convincingly argues that different political structures and cultures--mediated or not by experts—determine policy orientations, she conflates the bureaucratic and political realms. According to her perspective, the bureaucratic realm reflects the decisions made in the political realm and presents bureaucrats as responding diligently to the demands of their political masters as well as to the suggestions of experts. But that has not been the case in Argentina and Chile. In Chile in particular, the executive branch did not control the police and the courts after the transition to democracy. The field-theory approach provides the means to analyze the actions of bureaucrats, objectively determined by the hierarchical relations and dispositions of various agents. This institutionalist perspective also takes political structures as given and relatively rigid, so
that it is difficult within this perspective to capture the effects of major structural transformations in the political sector—i.e., the democratic transitions observed in the southern cone—and correspondingly, to capture changes in the relations between agents of the political fields and bureaucratic organizations. Similar conflations can be observed in the work of Savelberg (1999), who lumps together the government and the administration, and treats as a constant both political institutional structures and the system of knowledge production in his analysis. These analytical perspectives are of limited use here where many reforms in Argentina and Chile emerged exactly because of the changes in the ecology of penal experts and new policies of reform emerged because of the reconstitution of the political structure.

With the penal field and subfield analysis, I preserve the Weberian insight into the relevance of bureaucrats’ interests in co-determining or shaping changes in bureaucracies, but without reducing their actions to a general problem-solving logic, as Garland does. At the same time, I recover the specificities of the political system and of the experts that promote changes, as the institutionalists do, but I leave analytical space to account for the changes in the political system, in the community of experts and in the relations between bureaucrats, politics and experts in similar contexts of economic transformation.

Foucaultian approaches also inquire into how political forces, bureaucratic practice and expertise operate in penal change. From this perspective penal bureaucracies change because modalities of power (and the correlative formation of knowledge regimes and modalities of practice) mutate and reshape institutions and practices (Foucault 1995; Simon 2013). One central author here is O’Malley, who argues that penal organizational parameters mutate as a result of the proliferation of new rationalities in the political arena. With his perspective, we could analyze the effects of the “ascendant neoliberal political rationalities and related social technologies of ‘new managerialism’” (O’Malley 2002) on the evolution of penal bureaucracies in Argentina and Chile. However, he does not provide tools to account for the differences observed in countries that follow similar rationalities or that deploy the same technologies. He merely points out that such rationalities get articulated within “national political traditions” (O’Malley 2002) and that “politics is a[n] opened process of contestation” (O’Malley 1996:312), but this does not explain the particularities of the political articulation, nor how contestation leads to penal change. Sozzo (2008a), following this perspective, has argued that the recent evolution of penal organizations in Argentina is constituted by a recombination of “neoliberal” and “authoritarian” political rationalities in the penal realm. The problem with this thesis is that the same could be argued for Chile, but here penal organizations evolved out of the authoritarian regime very differently. The penal field analysis allows us to explain the structure of contestation over these “rationalities,” as well as to explain the introduction of new “technologies” (management, human rights, etc.), and to account for their effects in terms of the power of their carriers and opponents.

Finally, and still within the Foucaultian tradition, the work of Cohen (1985) advances a “deposits of power” model, according to which the transformation of institutions, practices and classifications deployed in social control are linked to the actions and interests of organizations, or to professional interests in changing political-economy contexts. (Cohen 1985:ch.3). Cohen, refreshingly enough, gives due place to the interests and power of experts, the conditioning effects of organizations and
managers, and the ideological influences of politics. But this rich and sophisticated approach portrays the different agents and organizations as operating and producing effects in isolation from each other, and not as objectively related and subjectively interacting. This lack of structural perspective leads Cohen to assume that the same agents always produce the same effects—i.e. organizations either sabotage or co-opt plans of reform—while the political system always appears as an external limit to the attempts of reformers. The perspective I propose shares Cohen’s multi-agentic model of change but integrates the different agents within a more stable and historically specific web of relations, the penal subfields, with a more parsimonious conceptual kit. At the same time, I empirically address the position and trajectory of these agents and consider the different ways in which their properties may interact in concrete cases. I.e. One can explain how police organizations or prison administrations may have different capacities to resist the actions of external reformers; or how political agents may have similar ideas while still producing different effects on penal policies because of the different structures of the political system and the party system in which they operate. Under some conditions they foster change, while under others they limit it. As suggested earlier, a bureaucracy is not necessarily a passive instrument that responds to the stimuli of the political system. Each penal sub-field is a space of forces, tensioned around the core relation between bureaucracy and central government and intra-bureaucratic struggles. In more autonomous bureaucracies, the intra-bureaucratic struggles, in turn, can become an independent contributing factor to bureaucratic change. In conditions of low bureaucratic autonomy, where the role of politics in initiating and following reforms is more central, as is the case in Argentina, the changes and orientations of the political system are the primary cause determining the reform process.

Within a field perspective, I combine evolutionary and diffusionist models of penal change, analyzing the struggles around reform policies within historically specific penal bureaucracies and political forces within penal subfields. Since the Argentine and Chilean penal fields have historically incorporated foreign models and professional expertise (Dezalay and Garth 2002), I analyze the contemporary continuity of this international importation of models, focusing on the moment of reception and the mechanisms thereof.

Analyzing the importation of penal policies and models is relevant to understanding the substantive direction of reform in Argentina and Chile, given the subordinate position they occupy within the global market of policies and statecraft (Badie 2000; Dezalay and Garth 2011). Both the Argentine and Chilean bureaucratic and cultural fields have historically imported foreign models into various state sectors, from the military (Nunn 1975; Ranalleti 2009; Rouquie 1985) to the banking and finance system (Drake 1989, 1994), to the educational institutions, and the penal arena.11 This internationalization of

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11 The importation of modern crime control institutions in Latin American is not something new. The colonial transfer of policies within the penal field continued between sovereign nations in the post-independence period. The introduction of modern police organizations by royal administrators in the late 18th century, was continued by the founding fathers of the new republics who followed European enlightened social control practices, and progressively, more and more North American ones (Salvatore and Aguirre 1996; Salvatore, Aguirre, and Joseph 2001) Starting in the 1840s many countries built almost exact replicas of US and British prisons, codified penal laws after the 1880s, adopted the Italian and French positivist criminology and institutionalized it within prisons around 1890s, incorporating it as legal criteria
penal state formation and transformation in the southern cone of Latin America continued with the recent changes of the penal state in contemporary Argentina and Chile. Analyzing such international ties enables us to better understand the contents of reform and the peculiar ways in which “democratic” penalty has been constructed during this period.

Within the field theory approach, the process of importation of policies is part of what Dezalay and Garth (2002) call “international strategies;” that is, “the ways that national actors seek to use foreign capital, such as resources, degrees, contacts, legitimacy, and expertise to build power at home” (Dezalay and Garth 2002:7). The analysis of importation within the context of international strategies requires taking into account importing agents’ social trajectories and their specific positions and interests in local arenas. By contextualizing each importation within the field of the police, the court or the prison, we can understand its differential and distinctive value, not only as compared to the local and the foreign models, but also as compared to different international strategies. For example, “community policing” was imported by the left-wing experts to counter “right-wing experts’” importations of Zero Tolerance. By situating these different and differentiating importations in their fields, we can explain the development of concrete programs and, indeed, the very system of importations itself. The same logic explains the Europeanization of prison privatization in Chile, which initially followed the total privatization US model proposed by right-wing think tanks, but which ended up following the French semi-privatized system, favored by the center-left government. The rejection of “zero-tolerance” in Chile and the subsequent incorporation of community policing from the US as a way to realize the “citizen’s security” doctrine (in Chile, of Spanish and German origin) follows the same pattern.

A second advantage provided by field theory for analyzing importations is that it helps explain why and how local agents invest in importations. The trajectory and interest in the game (illusio) explains both the “idealist impulses” of importer-reforms and their investment in new models, which can never be reduced to technical concerns, moral consensus or even political principles, as assumed by the “epistemic communities” (Karstedt 2002) and the “activist-networks perspectives (Langer 2007). Agents engage in importation to build or renew their authority within local penal fields by reconvertong their local or international capitals into capital of authority on penal policies. Finally, locating the importation and the mechanisms of reception within local arenas allows us to better understand the “labor of translation and adaptation to the cultural idiom and institutional framework” (Wacquant 2009a:2) The importing agents, who are imbued with a sense of the structure of the game, select the different features of the policy so as to fit their imported model to the local space of competing objective and discursive positions.

In sum, the penal field theory of bureaucratic change allows us to explain different penal outcomes under similar extra-field economic, social and even ideological conditions, while giving analytic centrality both to organizations and agents by highlighting their position and strategic agency. At the same time, it decouples and treats as empirically variable the relationships between politics, expertise and bureaucracies.
The central attention to historically specific and varying bureaucratic structures and political regimes lead us to the second literature addressed in this study, which is on recent changes in the state and politics in Latin America.

1.3.2. The political sociology of the penal state in the southern-cone: between institutions and parties

The second literature I aim to enrich is the sociology of the state in Latin America. In particular, I wish to engage with studies on the recent transformations of the Latin American state and the literature on bureaucratic reform itself. The comparative field analysis that I advance covers analytical space sidelined by Marxist perspectives, and enriches the study of bureaucratic change as proposed by neo-institutionalist and political economy accounts of bureaucratic power. The neo-marxist tradition on the Latin American state, while interested in the state, focuses on the re-articulation of class relations leading to authoritarianism (O’Donnell 1982), the transition to democracy in the political realm, or the passage from import-substitution development to export-oriented neoliberalism (Tedesco and Barton 2004; Thwaites Rey and Lopez 2005). These works study the “state from the outside,” focusing on “how extra-state spheres determine state reality” (Soprano and Bohoslavsky 2010:12), but fail to address the actual changes in state (penal) organizations, as well as the specific causes of bureaucratic change. Given the causal autonomy of processes in the bureaucratic fields, these changes and their determinants are relatively independent from the changes in the police and economic arenas.

Historical institutionalism has become a powerful perspective to explain bureaucratic state change in Latin America. Contrary to the neomarxist strand, it focuses on the state and zooms on the question of how variations in previous institutional conditions shape subsequent developments (Thelen 1999). It also pays due attention to “the most concrete attributes of state structures, institutions and procedures that impact the resulting policies” (Sikkink 1993:35). In her study of developmental policies in Argentina and Brazil (Sikkink 1991), Sikkink attributes the variable success of governments in implementing policies to differences in the stability of state organizations and their isolation from the political game—in particular, regarding recruitment and retention of personnel (Sikkink 1993). Pereira (2005) has documented that the differences in the mediation of judicial authorities in political repression follow long-term historical patterns (Pereira 2005) which, in turn, conditioned the success of court reforms after the dictatorship (Pereira 2003a).

In this dissertation I follow the insights of historical-institutionalism, analyzing the role of differences in institutional structures, autonomy and strength in the reform trajectories of the penal state bureaucracies. However, I complement this perspective with a field-theory perspective, for several reasons: (a) to better account for the emergence of policy innovations, (b) to better account for the substantive orientations of change within such institutional spaces and (c) to provide alternative ways to explain institutional change or continuity (Clemens and Cook 1999).

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12 Sikkink recognizes that “the properties of institutions did not determine the development of ... policies or their content” (1993: 44). In Pereira’s model, judicial reforms are seen as a “reaction” to the interventions of authoritarian rulers over the judicial bureaucracy. Such “reaction” model, assumes a constant agent, affected by authoritarian rulers and then reacting after the transition to democracy comes. The problems
While the comparative field-theory approach I propose here shares the path-dependency logic of change, it provides alternatives for explaining ideal innovation and change in state organizations. The historical-institutionalist perspective accounts for change as produced by endogenous modifications in norms and rules or by exogenous events that impede institutional reproduction. Norms change because of their vagueness, internal contradictions or unintended effects, combined with the density of networks that allow or prevent diffusion, orthodoxy and the learning of new norms (Clemens and Cook 1999:448-450). External events produce change by altering the availability of resources or transforming the functional dependencies and distributional properties of institutional arrangements. The problem with all these mechanisms is that they are impersonal, with norms and resources appearing as entelechies that move and react on their own, or as wholly derived from the institutional structure, with limited place for action, strategy and causally relevant interests and subjective dispositional tendencies.

In this Bourdieusian field perspective I take into account differences in bureaucratic organizations’ pre-transition autonomy from political authorities and confirm Sikkink’s hypothesis about autonomy’s centrality in explaining policy outcomes. In Argentina, the penal sectors of the state presented similarly low levels of autonomy to those of the economic sectors of the state that Sikkink studied. Upon the transition to democracy in Chile, the police and courts presented high levels of bureaucratic autonomy, similar to those of the developmental bureaucracies that Sikkink observes in Brazil. However, as I am interested in the changes in penal bureaucracies themselves—and not their efficacy to implement programs—and in explaining the emergence of reforms and the implementation of reforms in these bureaucracies, I consider the differences in autonomy to be other than *instruments* used by the central government to implement reform policies. I conceive the actual legal control over the budget, designation, and careers enjoyed by the top Carabineros’ officers and Chilean court elites at the moment of transition to be resources and assets that defined the objective relations between the bureaucracies and the incoming administrations. The high levels of bureaucratic autonomy determined the objective relations inherited from the authoritarian regimes and shaped the interests of central-government and bureaucratic leaders in relation to reform proposals. As I will show, in Chile, where the central government did not exert much control over the Carabineros and courts, the central government very rapidly and consistently demanded wholesale reforms of the penal bureaucracies so as to modify the inherited balance of power. In Argentina, where the government effectively controlled the top bureaucrats, budgets, and designations in the police, court and prison bureaucracies, the interests in reform were less, and the general backing of the whole political arch of the initial changes were weaker.

But the position-taking of a bureaucracy will be determined not only by its objective relation to the central government, but also by the internal balance of power within the bureaucracy. To fully understand processes in fields with highly autonomous bureaucracies, I introduce within the analysis of change the power dynamics within the

here are many. First, who are these agents? Second, if they are the same agents that operated during dictatorship, the narrative of reaction doesn’t explain why they reacted in the direction they did. i.e. in the cases where dictatorship removed most judges, it would have been enough with appointing new judges in the democratic period. Previous democratic returns where not accompanied with reform proposals, and indeed, some reforms were initiated during the dictatorship periods.
organization (in conditions of low bureaucratic autonomy, internal power dynamics very closely reflect political decisions and struggles). Only by considering the field-like properties of organizations (Bourdieu 2005b; Emirbayer and Johnson 2008) can we understand what groups of bureaucrats back or counter the new models, as part of their own strategies to obtain supremacy within the organization. In highly autonomous bureaucracies intra-bureaucratic struggles become an independent mechanism for change that interacts with the struggles between the executive branch and bureaucracies. These intra-bureaucratic struggles for supremacy explain the origins of a number of initiatives for change within the police and courts of Chile, as well as the efficacy of political agents in penetrating these organizations. In conditions of low-bureaucratic autonomy from the executive branch, the bureaucracy behaves more like an organizational apparatus, that is, as a space of relations where struggles are reduced to a minimum, “the dominant manage to crush and annul resistance and the reactions of the dominated, [and] all movements go exclusively from the top down” (Bourdieu and Wacquant 1992:102). The cases of the police, courts and prisons organizations in Argentina and of Chilean prisons, where elite bureaucrats have very limited power, conforms a structure of relations more like an apparatus than like a field.

Finally, in this field theory approach I include the political dimensions addressed by political incentive perspectives on administrative change (Heredia and Schneider 2003; Kaufman 2003), but I locate them within a greater system of agents struggling over authority in the different fields. I take into account the executive branch and legislator interests and their pragmatic orientations (Heredia and Schneider 2003: 1), but as they relate to those of experts, journalists, and, most importantly, the interest of elite bureaucrats commanding the police, courts or prisons. If in conditions of high bureaucratic autonomy it is necessary take into account the power interests and strategies of the autonomous bureaucracy and its internal struggles, in cases of heteronomous bureaucracies, the actions and interests of political agents have a decisive weight over initiating (and reversing) reform policies, (See Eaton 2008; Hinton 2006; Trindade Maranhão Costa 2004; Ungar 2002). To understand the orientations of the executive branch I take into account not only their explicit political programs, but the party system in which they operate.

The transition to democracy meant not only the election of new executives and representatives; it also meant the reconstitution of the political party system. The parties that assumed control of the state in each country were very different, in terms of ideas and governing practices, leading to very different central government orientations. I argue that the consolidation or reversal of the initial institutional reforms were affected by the ideological orientations of the parties in power and by the different political party styles and party systems. That is, I take into account the dynamics of the party system to explain the different position takings of the executive branch in relation to bureaucracies. The parties that governed the transition to democracy and their aftermath—Concertación de Partidos por la Democracia—an alliance of Christian Democrats, Socialists, and the center-left Party for Democracy—in Chile and Partido Radical (UCR) and Partido Justicialista (PJ) in Argentina—followed the neoliberal tenets of flexibilization of labor, reduction of welfare, responsabilization of citizens, and in the economic realm, shifting from import-substitution policies to the export-led development of the 1980s and 1990s. However, it was the difference in party structure and in the the consensus across parties
that independently also determined the different reform outcomes. In Chile, the platform-based orientation of Concertacion, along with its “technocratization” and marketization (Roberts 1998a) and the consensual style of politics among parties, reinforced the central government efforts to change the more autonomous police and court bureaucracies. On the other hand, it prevented much change beyond privatization within prisons, as the initially heteronomous prison administration subordinated penological standards to political priorities. In Argentina, the ideologically volatile and structurally changing and personalistic party system that was reconstituted after the transition—and in particular the mutation of Peronism from an union-based party to a political machine based on clientelism (Levitsky 2005)—interfered with reform in the police, courts, and prisons, halting and even reversing reforms when they appeared as inconvenient for the party in power. In the prison, however, this politicization allowed for the introduction of human rights standards.

In sum, this is a comparative historical study of the transformation of the police, criminal courts and prison bureaucracies in the democratic era in Argentina (1984-) and in Chile (1990-), which concentrates on the contents of the reforms, on the evolution of penal organizations resulting from struggle for reforms, and on the overall reconfiguration of the penal fields in the era of electoral democracy. The analysis historicizes both the emergence of reforms and the bureaucratic space within which they were battled over. I argue that the autonomy and strength of bureaucracies and the institutional structure of the party system within the penal subfields were decisive for the outcomes of the reform projects, leading to the reconstitution of the penal field out of the militarized state. Comparing these two countries with similar demographic, economic, cultural and criminal characteristics, I examine and isolate the effects of interacting mechanisms of experts’ reconversion strategies, bureaucratic-central government struggles and executive-branch orientation operating in specific political and institutional contexts to explain the evolution of the core penal bureaucracies and the reconfiguration of the penal field after the transition to democracy.

1.4. Cases, data and methods

Following a most similar case design, Chile and Argentina have been chosen for having similar social structures in terms of class structures, urbanization rates, crime rates in the period analyzed, and have both experienced authoritarian regimes. This allows us to “control” the effects of those aspects which theories of late-modernity, of neoliberal penal state making and foucaultian approaches point to when accounting for changes in penal bureaucracies. At the same, it should be clear by now that this is not a comparison of countries. Instead, it is a comparison of the evolution of criminal justice organizations within a specific penal sector of the bureaucratic field. In that respect, I am not comparing “Chile” with “Argentina,” as Argentina includes a plurality of criminal justice systems where the federal system coexists with 23 provincial police, courts and prisons systems, which differ in size, complexity, capacity and legitimacy—from big provincial criminal justice systems (Buenos Aires, Córdoba, and Santa Fé, which cover almost 80% of the national population), to small systems of the northern and southern province that police thousands and try and imprison a few hundred every year. I compare the evolution of the criminal justice system of Chile, which enforces the law in the metropolitan region
of Santiago (5,000,000 in 1990) and in the national territory, with the Federal criminal justice system of Argentina. The Federal criminal justice system operates in the metropolitan city of Buenos Aires (3,000,000 in 1990), covering a third of the Great Buenos Aires metropolitan area of circa 9,000,000, as well as enforcing federal criminal law in the whole national territory. Both the Argentine Federal government and the Chilean bureaucratic field include the military.

The processes of reform and counter-reform I describe regarding the federal justice system of Argentina are independent from the dynamics in the provincial criminal justice systems. I could have added also the other grand criminal justice system of Argentina, that of the Province of Buenos Aires, which has jurisdiction over the remaining part of the Greater Buenos Aires metropolitan area. But that would not have been analytically productive for the basic reason that there we also find the same experts that we find in the Federal system also attempting to reform the highly heteronomous police, courts and prison system, and with similar outcomes. Instead of extending the analysis empirically, I decided to concentrate analytically on one case in Argentina. The similar evolution of penal bureaucracies toward limited change in the Buenos Aires province seems to respond to the same causes as does the federal criminal justice. Similar reforms were introduced in the last two decades, but volatile executive branch reorientation interrupted and limited reforms in the police (Sain 2008), courts (Palmieri 2004) and prisons (CELS 2005b).

To isolate the effect of differences in autonomy and executive branch orientation in relation to similar models introduced in the policing, courts and carceral fields, I employed a most-similar cases design, whereby I explain different and specific evolution of comparable penal bureaucracies in most similar economic, political, and ideological contexts. Following Steinmetz (1998) and Gorski (2004), I trace the operation of social mechanisms at play and the concrete ways in which they explain the observed outcomes. I isolate the causal efficacy and interaction of (i) (internationalized) reconversion strategies of new and old experts; (ii) synergy/antagonism with central-government-bureaucratic struggles; (iii) their convergence with political party system determinations over executive branch (for cases of high bureaucratic autonomy; (iv) the synergy/antagonism with intra-organizational struggles. This comparative study aims to determine the causal weight of experts’ strategies and international models in determining the substantive direction of change in both countries. The study of three different penal institutions within each country serves to identify how bureaucratic-central government struggles and relationships interact with political dynamics to shape the local forces and strategies that motivate such bureaucratic changes, determining different reform paths. I explain outcomes as a result of the specific combination of interacting mechanisms.

There are no one-to-one relations of causality between the causal mechanisms and outcomes. The outcomes (the transformation of the bureaucracies), the observed events, derive from the contingent combination of the actual effects of these mechanisms (Steinmetz 1998; Gorski 2004). In some subfields a specific combination of interacting mechanisms leads to ‘successful implementation’ of reform, while in others subfields the same combination of the same mechanisms leads to its abandonment. In other cases it is a different combination of causal mechanisms that produces similar (observed) outcomes. For example, in Chile, an “international strategy of importation”, combined with a
struggle between the central government and the police elites, as well as intra-bureaucratic struggle, produced the introduction and consolidation of community-oriented policing. In Argentina, the international importations and intra-police struggles explain the introduction of community policing. However, struggles in the political arena led to its prompt abandonment. The same mechanism (importation) leads to different outcomes when combined with other mechanisms in each field.

This study is based on two years of fieldwork in Santiago de Chile and Buenos Aires between 2009 and 2010, followed by a revisit in 2011, collecting and analyzing documents about the political and bureaucratic history of this criminal justice institutions and interviews with political, penal-administrative and experts elites. I draw on secondary sources and primary documents to reconstruct the history of these bureaucratic and political spaces up to the moment of transition to democracy. To reconstruct the history of the police, court and prisons, besides the scant secondary bibliography, I revised official internal publications and documents, in particular the house-organ publication and annual official reports. I followed the institutional evolution of the Carabineros, the prison Service of Chile, and the Federal Police and Prison Service of Argentina by studying their mission definition, internal organization and specializations. I also learned of internal power fractions by reading their house organ and internal orders between 1955 and 2005. I analyzed the Revista de Carabineros (RC) between 1955 and 2005; the Revista Chilena de Ciencias Penitenciarias y Penales since its launching in 1950 to 2005, both available at the National Library in Santiago. I revised the Internal Order and some Reserved Orders of the Federal Police between 1960 and 2005; I also collected and read the annual memories of the federal police which have been discontinued after 1955-1958, the 1974-1979, 1983, and 1995 annual reports, available in the Historical Research Center of the Argentine Federal Police. To reconstruct the evolution of the Federal Penitentiary Service, I consulted the weekly Penitentiary Bulletin between 1970 and 2005 at the Federal Penitentiary Service Officers Academy Library, as well as the secondary literature. I also collected reports from reform commissions at the Chilean and Argentina Justice Ministry Libraries.

I draw on interviews and document analysis to reconstruct the struggles, strategies, and trajectories of the efficient agents within those fields since the democratic era. To understand the strategies and discourses of politicians, I examined party platforms, speeches by presidents and ministers, annual messages to legislative assemblies, parliamentary discussions, commission reports, and press release articles. I analyzed the democracy-era annual messages from the executive branch to the legislative assemblies regarding their policies and achievements in the criminal justice sectors. These were consulted in the libraries of the Argentine and Chilean Congress.

I use biographic interviews and documents to reconstruct the strategies and interventions of relevant agents within the fields since transition and to reconstruct the social trajectory of agents involved. The core data has been produced through interviews with the reformers and political authorities inside and outside of the state through in-depth semi-structured interviews. I produce 124 interviews carried out in 2009 and 2011 in Santiago and 2010 and 2011 in Buenos Aires. The interviews constitute what Dezalay and Garth call “relational biographies” (2002:9). These were designed to trace the international cultural, economic and social capitals deployed in the different fields, as
well as to follow the reconversion strategies of experts and the position-taking of bureaucracies and political agents in ministries, secretaries, and commissions.

I interviewed political, state, legal and academic elites on their trajectories, views, assets, relations and roles. I interviewed present and former high-ranking police and prison officials in the areas responsible for organization and deployment design, education, and general planning offices. I interviewed the reformers who were part of the intervening non-governmental organizations, think tanks and universities involved in the reforms, as well as the advisors to the Departments of State (in charge of the police) and Justice (responsible for the courts) and Secretaries of the Prison Services of Chile and Argentina.

I introduced myself as studying the reforms in Chile and as studying the recent evolution of the criminal justice administrations Argentina. I constructed the sample of interviewees after having read about the main proponents of reform the protagonists in the debates over reform. I targeted former and present members of ministries or bureaucracies involved. Prison, courts and prison officers were easier to determine from the start, considering that their official positions were public, the activists, members of think tanks and individual professionals who had participated in the reform were also identified, as they appeared in official reports, parliamentary commissions’ hearings, media discussions, and conference programs. I also resorted to referral from central figures, who would point out their reform “allies” and “opponents” to me.

Within the police, the officers interviewed had extensive careers in or directed Planning and Development, Training, Metropolitan Security, Public Relations, for the Carabineros and the Argentine Federal Police. I also interviewed former military officers working for the national secretary of security in Argentina, regional prosecutors of Santiago and district prosecutors in Buenos Aires and former judges of the Federal Justice of Argentina. From the prison services in Chile, Gendarmeria de Chile, I interviewed former and present officers from the planning division, training division, the Director of the Prison in Santiago and the privatized prison of Rancagua, the Director of Social work and of the Internal Treatment Directors and Community Sanctions Service Director, during the 1990s. In the Federal Penitentiary Services I interviewed former Secretaries of Penitentiary Affairs, Directors of Security, Directors of Training, Directors of the Devoto Jails, and Judicial affairs, and former and present incumbent of the Prison Ombudsman office.

Within the Chilean and Argentine thinks tanks and research centers I interviewed the great majority of the members of the special government commission to reform criminal courts, all the experts involved in police reform, and all those in prison reform in Argentina and prison privatization in Chile. In Argentina these involved primarily members of the Instituto de Estudios en Ciencias Penales y Sociales (INECIP), Centro de Estudios Legales y Sociales (CELS), and Unidos por la Justicia. In Chile, the members of the Facultad Latino Americana en Ciencias Sociales (FLACSO), Center for the Study of Citizen Security (CESC), Institute of Public Policies and the Political Science School from the University of Chile, and the Justice Study Center of the Americas (JSCA) and professors at Universidad Diego Portales, Universidad de Chile and Universidad Alberto Hurtado. I also interviewed chief executive officers and personnel from Fundación Paz Ciudadana, and Centro de Estudios del Desarrollo, Instituto Libertad y Desarrollo, in Chile; and FORES, in Argentina. These institutions and the members constituted almost
the totality of effective agents involved in reforms struggles, in the police, courts and prisons. There have been some groups that are less represented, and consist mainly in the officers of prosecuting office in Chile, and the upper echelons of the National Constabulary forces in Argentina.

With the secondary data, the documentary analysis and the interviews data, I reconstructed the historical evolution of these bureaucracies and their internal factions. I then reconstructed the reconversion strategies of international experts using “biographical accounts of individual choices and career strategies to reveal the hierarchical structures and institutions in which individuals operate[1]” (Dezalay and Garth 2002:9). Finally, I documented the succession of position-takings of bureaucracies and political agents in the struggles around reform in democratic times, complementing the reports of the protagonists of the struggles for reform with documentary evidence.

1.5. Organization and contents

I organize the analysis in three paired historical comparisons on the police (chapter two), courts (chapter three) and prisons (chapter four). This leads to a final chapter (chapter five), which integrates the independent causal series analyzing the reconstitution of the historical core of the penal field in each society two decades into democracy. In comparing and explaining the evolution of each bureaucracy within their respective fields, I provide an analysis in two steps. I first concentrate on the consolidation of each organization within the bureaucratic arena since the 1900s, including the acquisition of different degrees of bureaucratic authority in relation to the executive branch and other organizations of the bureaucratic field, in particular the military, at the moment of transition to democracy. I then turn to the post-transition proliferation of experts in each field and to their struggles over reform. In the democratic era, I first trace the reconversion strategies of experts who advanced new models and rationalities that questioned the mission and bureaucratic routines inherited from the dictatorship. I then reconstruct the structured struggles around reform leading to bureaucratic change or institutional continuity.

In chapter one, I first analyze the Chilean cases and start by determining the different degrees of bureaucratic autonomy of the police forces from political agents and from the military within the Chilean bureaucratic field. I then turn to the proliferation of new agents in each field and the constitution of the democratic-era heterodoxy. I then follow how in Chile, the different police forces reacted to the advances of the central government. The heteronomous Carabineros responded creating its own reform programs and implementing their own new mission definition, accountability practices, and new deployment plans so as to fight the material and symbolic attacks of the central government while the heteronomous Investigative Police responded aligning itself to the whims and programs of the government. Here I show that the coherent party system maintained constant pressures over the Carabineros making it self-reform and provided stability to the reform programs the first democratic administration initiated within the Investigative Police allowing them to get consolidated. Turning to the Argentine case I show the constitution of a new heterodoxy after the begging of democracy which was promptly implemented within the historically more heteronomous police forces. There however, as I show, the changes in the policies of the central government across administration blocked the full implementation of those reform programs or the undoing
of the changes initiated by the previous administrations. I show that these reversals in executive branch position-taking follow from the polarization and weakness of the party system.

In chapter three, after reconstructing the objective structure of relations between criminal courts and the executive branch before democracy and the emergence of the position of the criminal code-writer reformer within the juridical field, I turn to the democratic era. I trace the formation of new heterodoxy involving old and new legal scholars and reactivating the criminal courts reformer position Argentina and Chile (here they were joined the economists), and the different strategies and alignment of forces that lead to the full implementation of an accusatorial regime with an independent and powerful prosecutor over the formerly autonomous courts system of Chile and the limited transformation of the criminal procedure with weak prosecutors in the weak and historically heteronomous federal criminal courts of Argentina. I show how executive branch interference shaped the extent of reform in Argentina and how the cross-party consensus in Chile converged to implement a full reform.

In chapter four I focus on the return of domestic experts who tried to revive correctionalist and rehabilitation programs and prison regimes in place in the late 1960s in both Argentina and Chile. These correctionalist experts were joined, in democratic times, by human-rights experts in both countries and, in Chile, by economists who had acquired enormous authority in the field during dictatorship. In Chile these economists relocated their assets into think tanks during the first decade of democracy and launched a final attack on the prison bureaucracy after having privatized health, education, social security and the housing market. In 2000 they achieved the privatization of prisons in Chile, while in Argentina, it was the human rights faction that made more significant progress in the mid-1990s. Privatization in Chile and the arrival of human right activists in prisons were facilitated by the increased chaos and turmoil of the democratic prisons. In both cases, the temporary return of rehabilitation discourse, paradoxically, was essential to understand the increase in prison building and in imprisonment rates.

After analyzing the struggles for reform in each penal subfield, in chapter five, I reconstruct the new architecture and physiology of the penal sector of state in Chile and of the federal state in Argentina. I show the newly acquired centrality of courts in Chile, while led both a judicialization of police practices and to the legitimation of imprisonment. I describe the new consensus around citizens’ security and managerially rationalized efficiency and their technocratic modality of policing making legitimating the highly punitive penal state of Chile. In Argentina, I show that the penal field has become more fragmented with, with a fractured symbolic order, where penal bureaucracies have returned to their older traditions. In this field, the limited efficacy of reformers prevented them to acquire general authority of penal policies. Penal policy-making has veered progressively toward a populism punitivist style dominated by agents of the political field. I close with a discussion of the main contributions of this study to the sociology of penality and of bureaucratic state change in Latin America and beyond.
Chronologies

Chile

1920  Center Liberal Party candidate Arturo Alessandri elected president
1925  New presidentialist constitution; end of parliamentary system
1927  Authoritarian Presidency of General Carlos Ibañez del Campo
      Creation of Carabineros
1931  Ibañez is deposed, Carabineros returns to the Ministry of Interior
1932  Arturo Alessandri re-elected president
1938-52  Popular Front presidencies with middle-class Radicals and socialist and communist parties
          Import-substitution industrialization policies
1952  Carlos Ibañez del Campo re-elected president
1953-1973  International Police Assistance Agency trains Chilean Police
1957-70  Chilean economics students educated at University of Chicago—the Chicago Boys
1958  Liberal Jorge Alessandri elected president, reinforces police, courts and prisons
      and weakens military
1961  US International Police Assistance programs after Cuban revolution
1964  Christian Democracy Eduardo Frei elected president; mobilization in the countryside and land reform
1970  Salvador Allende president, urban and rural workers mobilized, expropriation of factories and occupation of lands rejected by Supreme Court
1973  military coup brings Pinochet to power; Chicago boys provide plan for structural adjustment. Carabineros Director is part of the Junta. Supreme Court remains in power, allied to Pinochet
1975  Chicago Boys control Planning Office (ODEPLAN); DINA is created
1982-1985  Debt crisis bring popular protests / Implementation of parole service
1985  New General Director of Carabineros, Rodolfo Stange Oelckers
1988  Plebiscite on the continuing rule of Pinochet results in a no vote, leading to presidential election
1990  Christian Democrat Patricio Aylwin, elected president
1992  creation of National Information and Security Directorate (DISPI)
1993  Criminal Procedure Reform Vargas and Riego meet with FPC
1994  Frei Montalba, from the Christian Democratic party, elected president
1992  Argentine criminal procedure scholars meet Chilean scholars
1995  criminal procedure law project presented to Congress
      The Carabineros Director and former Junta Member, General Stange resigns
1998  Police launches pilot modernization program
2000-2005  New criminal justice, creating prosecutors and defense services
2000  Socialist Ricardo Lagos elected president
2006  Private prisons inaugurated
Argentina

1916  Center UCR party Irygoyen elected president
1919  University Reform movement changes academic relations making them less hierarchical
1930  Military coup interrupts 68 years of republic order
1933  Prison Directorate created
1938  National Constabulary (Gendarmería Nacional) is created
1939  The province of Córdoba passes new criminal procedure code by Sebastian Soler and Alfredo Velez Mariconde
1945  Buenos Aires Capital City Police become the Federal Police
1946  Juan Peron elected president, removes Supreme Court Justices
1955  military coup removes Peron, Levene removed from Justice
1960  Velez Mariconde drafts a second reform project for the federal justice
1966  Julio Maier drafts a second reform project for the federal justice
1967  Penitentiary modernization program 1967-1971
1968  Claria Olmedo (heir of Velez Mariconde) drafts reform project for federal criminal justice
1970  De facto President Lanusse establish National Penal Court to fight subversion
1972  Maximum security prison for political detainees
1973  Juan Peron is elected president
1975  Ricardo Levene, Supreme Courts Justice proposes federal justice reform
1976  Military junta takes power begging with opening of the economy
1978  Julio Maier and Claria Olmedo from Córdoba Law School, draft Model Criminal Code for Latin American
1983  Raul Alfonsin from the UCR party is elected president
1985  Julio Maier proposes a criminal procedure reform to Alfonsin’s legal advisors.
1986  Maier writes criminal procedure code and Binder redesigns courts organization
1989  Partido Justicialista candidate Carlos Menem is elected president and implements neoliberal structural adjustment of the economy
1989  Maier and Binder’s projects are rejected in the House of representatives. They create private research center INECIP
1990  Levene’s “mixed” criminal procedure project is discussed in the Senate
1991  “Mixed” criminal procedure code is put in place in Argentina
1992  New organization of justice act is passed in Argentina
1993  - Binder works in El Salvador, meets USAID officers.
1995  Community policing campaign at PFA / National Penitentiary program launched
2000  UCR Fernando de la Rua president / second modernization of police and prison
2001  Fernando de la Rua renounces after political mobilization
2003  Government dismantles planning office at PFA, sabotages Prison ombudsman
Chapter 2
Fighting for a democratic police: between institutional heritages, new experts and democratic politics

[Synopsis chapter 2]

[In this chapter, I first provide basic information about the economic, social structural and political development of Argentina and Chile in the last century and in the recent decades, both to facilitate the reading but also to highlight the relevance of the mechanisms I posit to explain the recent divergent evolution of the police bureaucracies in those socially and economically similar countries. Next, I explicate the concept of policing field, discuss alternative theories of police change, and then engage in the comparative reconstruction of the long term institutional consolidation of the police forces in Chile and Argentina to turn then to their evolution since transition. In the long term reconstruction I determine the objective position of the police bureaucracy at the moment of transition vis-à-vis the central government in the policing field, identifying the different levels of bureaucratic-based authority police forces acquired within each policing field before the transition to democracy and document the trajectory of internal police fractions. I show that the Carabineros before the recent transition had evolved away from party politics and became independent from the military. These developments enabled the Carabineros to resist the advance of the army during the dictatorship while the smaller Investigative Police was thoroughly penetrated by political interests before dictatorship and it was unable to resist the advance of the military during dictatorship. After the transition and during the first decade of democracy the Carabineros relied on its enormous bureaucratic autonomy to intervene as an independent authority within the policing field, while the Investigative Police was rapidly controlled by the incoming elected authorities and reformed by the government in line with the new models of reform. In the case of Argentina, the Federal Police and the National Constabulary have been historically penetrated by political parties and the military. During dictatorship these forces were rapidly subordinated to the military, operationally and ideologically.

In the second part, covering the democratic period, I first trace the proliferation of new experts within each policing field, who proposed new policing models and policies. Next I analyze the struggles in which the bureaucratic elites, experts and executive branches clashed around modifying those bureaucracies in line with these new models and standards. The objective positions of both the police and executive branch regarding their authority over policing policies determined how each central government confronted the police after the transition to democracy and how much political capital they invested in police reform. Those differences in objective relations and the dispositions of agents determined the strategies of the central government and the police elites. In Chile, reforms derived from the conjuncture of Carabineros intra-police struggles and the advance of the central government over the control and direction of the police, which led to self-reform in the Carabineros, directing by the ascending fraction of administrative specialists within the police. The more heteronomous Investigative Police was reformed from above by the central government counting with the docility of the commanders of the small police. In Argentina, initial reforms imposed by the central government over the Federal Police and the National Constabulary were reversed by intra-police struggles in the Federal Police and the instrumentalization of both police forces by the central government in the following administrations. I close with a brief section explicating the main contributions of this analysis for the sociology of police change.]
Introduction

The authoritarian police apparatuses that engaged in torture and disappearances to sustain the military regimes of Chile and Argentina during the 1970s and 1980s mutated very differently after the transition to democracy. Today they have very dissimilar missions and modalities of practice. In this chapter, after sketching the economic, social and political features of these societies, I explain why the police evolved so differently in Chile and Argentina after the return of democracy, even though they followed the same models of reform.

Deploying the concept of policing field, I explain the genesis of demands for police reform toward greater legality and political accountability, the adoption of public management schemes and new operational deployment models based on “community policing.” I also explain why the police forces, after the return of democracy, changed in Chile in line with the new models and standards whereas this was not the case in Argentina. After an initial slight change in line with those models, the Argentine Federal Police returned to its traditional schemes of political policing, combined with harsh law enforcement based on reactive territorial control and increased violence and corruption. The National Constabulary retained its mission and militarized deployment style, and expanded its traditional role of border patrol and protest control to also include urban policing. I demonstrate that the content of the demands for organizational police change derive from the reconversion strategies of new experts and organizations (human rights outfits, economists and lawyers in the academy, and think tanks) reinvesting their political and academic capital accrued during the dictatorship into the policing field after the inauguration of electoral democracy. I show that the contrasting evolution of the police in Chile and Argentina result from the combined effects of struggles between (a) the police and the central government over controlling the police forces, and (b) between groups of police officers over organizational control, in relation to police forces with historically different levels of autonomous bureaucratic-based authority.

2.1. Historical backdrop: economic development, class structure and politics in Chile and Argentina before and after the transition to democracy

Before turning to the analysis, I must briefly refer to the similarities in economic transformations beginning with the 1920s, the political incorporation of new social groups, and, critically to the differences in participation of the army in politics and expansion within the penal bureaucratic sector before transition. I point also, to the neoliberal economic transformations, changes in social and urban structures, and in crime rates after the transition to democracy.

Throughout the twentieth century Argentina and Chile underwent comparably similar economic transformations, shifting from an export economy based on mining and agricultural goods exportation to industrialization that fueled the emergence of large middle-class sectors and highly mobilized working classes. The period of export-oriented development of 1880 to 1930s, based on mining enclaves in Chile and on agricultural production in Argentina, was followed by a period of import-substituting industrialization from the 1930s to the 1980s. The import-substituting industrialization was led by an expansive intervening state, which was active in the economy, which served as a
producer and protector of local industrialists, and which sponsored both internal consumption and stable job markets (Skidmore and Smith 1989:54–55).

Changes of the economy led to changes in social space. Both Argentina and Chile were precocious, compared to neighboring countries, in their development of a large middle class and a highly organized working classes as of the 1920s. Professions and technical occupations, including doctors and engineers as well as lawyers, held positions in the state and private bureaucracies. By the 1950s, 32% of the Argentine population belonged to the non-manual middle class and 62% of the economically active population belonged to the working class (Auyero and Hobert 2007:223). Of the employed population, 13% had jobs in factories. In Chile, 22% of the population belonged to the middle-class and 9% were working in factories (Germani 1966:226). Changes in the economy also produced massive internal migration to Santiago and Buenos Aires, as well as other secondary cities. In 1950, 48% of the Argentine population and 43% of the Chilean population resided in cities with more than 20,000 inhabitants (Germani 1966:226). In Argentina that proportion increased to 79% in 1970 (Auyero and Hobert 2007:219). Argentina and Chile were the most urbanized countries in Latin America in the 1950s, with the highest proportion of workers employed in industry and services. This new social structure was promptly reflected in political changes, and in particular, in a renovated political system that incorporated these groups.

During the export-oriented period, the party systems of these countries were structured around oligarchic cliques and liberal middle-class parties, with the latter rising to contest the hegemony of the former. In Chile, the oligarchic Conservative and Liberal parties—divided over secularization issues—were joined by the middle-class Radical Party in the first decades of the century, obtaining the presidency in 1919 under Arturo Alessadri. In Argentina, the conservative elites witnessed the formation of the middle class radical Party (Partido Radical) in the 1900s, which governed between 1916 and 1930. The middle-class parties broke the exclusive “oligarchic democracies” based on economic liberalism and a liberal constitution that operated with a restricted political franchise, excluding immigrants in Argentina and the rural workers in Chile. Only after the 1930s did the working classes began to become incorporated into the political system.

That incorporation of the new classes took place in different ways. In Chile the working and new industrializing classes became part of a “cooptative democracy” where “the political party system was reorganized to represented the interests [of each] of the new groups and strata in society, especially labor and business.” (Smith 1998:60) This gave place to pro-labor and pro-industrialist parties in the electoral process. The first result of the co-optative democracy was the Popular Front, which combined middle-class Radicals with communists and socialists; they were in power between 1938 and 1952. This class-based party system gave “ample support for the system” and sustained the rule of law within the political arena while incorporating the working classes. In the future, the class-based parties comprised a tripartite system, formed by conservative and liberal high-class parties, middle-class parties and working-class parties that would become polarized in the 1970s with the election of Allende.

In Argentina the new social groups were integrated into the political arena through a multiclass “populist alliance,” which incorporated different classes sectors of society and their antagonistic interests. General Juan Peron led a populist alliance using the state to integrate industrialists and workers’ unions. This political solution led to a
less stable and institutionalized party system. As Smith argues, the political game in Argentina became authoritarian and exclusionary preventing the participation of opposed alliances (i.e. landed interests and military opponents, and competing parties). The system was highly repressive, conflict-prone, personalistic, and dependent on the capacities and skills of the leader. Furthermore, it agglutinated sectors around general symbols and rhetoric (Smith 1998:63), rather than around concrete and detailed programs. The Peronist Party (Partido Justicialista) and the Radical Party (UCR) were the core of a weak and polarized two-party system from the 1950s to the 2000s.

The participation of working and middle classes in the political arenas led to the expansion of social security, which, even if stratified and uncoordinated, covered the majority of the labor force (Whitehead 1994:76). This social provision was combined with extensive educational and health coverage. By the late 1960s, the social structure of these two societies became almost identical. In the decades that followed, the societies continued to evolve in very similar ways, in particular after the turn toward a liberalized market economy that began in both countries in the 1970s (see Table 2.1). The major difference, however, was professional and executives expanded their number in Chile in the last decade.

### Table 2.1 Class structure Argentina, Chile and Brazil (1970-2000)

<table>
<thead>
<tr>
<th>Country</th>
<th>Year</th>
<th>Capitalists</th>
<th>Professionals &amp; Executives</th>
<th>Small petty bourgeoisie</th>
<th>Micro enterprises</th>
<th>Formal workers</th>
<th>Informal workers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Chile</strong></td>
<td>1970</td>
<td>1.9</td>
<td>7.1</td>
<td>7.2</td>
<td>4.8</td>
<td>60</td>
<td>26</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>1.6</td>
<td>12.9</td>
<td>2.7</td>
<td>9.4</td>
<td>45.7</td>
<td>23.5</td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td>1.6</td>
<td>17</td>
<td>7.2</td>
<td>9.7</td>
<td>43.4</td>
<td>21.1</td>
</tr>
<tr>
<td><strong>Argentina</strong></td>
<td>1970</td>
<td>1.5</td>
<td>7.5</td>
<td>9.7</td>
<td>9.7</td>
<td>59</td>
<td>22.3</td>
</tr>
<tr>
<td>(Greater Bs. Aires)</td>
<td>1990</td>
<td>2.1</td>
<td>3.3</td>
<td>6.4</td>
<td>10.1</td>
<td>44.2</td>
<td>28.7</td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td>1.4</td>
<td>6.9</td>
<td>5.6</td>
<td>15.7</td>
<td>46.1</td>
<td>24.1</td>
</tr>
<tr>
<td><strong>Brazil</strong></td>
<td>1970</td>
<td>1.7</td>
<td>4.8</td>
<td>-</td>
<td>7.2</td>
<td>20.5</td>
<td>27.1</td>
</tr>
<tr>
<td></td>
<td>1990</td>
<td>1.5</td>
<td>7.5</td>
<td>3.3</td>
<td>8.5</td>
<td>49.7</td>
<td>34.4</td>
</tr>
<tr>
<td></td>
<td>2000</td>
<td>2.5</td>
<td>4.9</td>
<td>3.9</td>
<td>9.7</td>
<td>44.6</td>
<td>34.4</td>
</tr>
</tbody>
</table>

* Owners of firms employing five or more workers. Med溇! Salaried administrators, university professionals, technicians in firms employing fiver of more workers. Owners of firms employing fewer than five workers plus own account professionals and technicians. Public workers or waged workers in firms with fewer than five workers. Waged workers in firms with five or more workers. Own account and domestic services excluding professionals and technicians. Source: Portes (1985) and Portes and Hoffman (2003).

The high proportion of formal workers and powerful unions in the 1960s and early 1970s, as well as strong parties, led to high levels of political mobilization, as the import-substitution industrialization model was reducing its capacity to integrate workers and professionals at the same rate to the labor market. In Argentina, students and unions, as well as parties excluded from the political system by the authoritarian regimes, all mobilized. In Chile, the mobilization was led by new and old parties. The new Christian Democratic party and the Socialist party put reformist Christian democrat Frei in the presidency in 1964, followed by Socialistist Salvador Allende in 1970. These administrations mobilized the urban poor and the rural workers. Reacting to these...
mobilizations gave the military the opportunity to take control of the government as an institution, in what has been called “bureaucratic authoritarian regimes” (Collier 1979).

After the reconstitution of the political system in the 1930s, in Chile the armed forces were excluded from the political arena until the 1973-1989 dictatorship, while in Argentina they continued having a central political role. In Chile, after the end of the 1927-1931 dictatorship of General Ibañez, political parties expelled the military from politics after removing Ibañez del Campo. Between 1931 and 1973, the military followed and obliged to the legalist doxa of the political field (Rouquie 1985:257). By contrast, in Argentina after the 1930s, the military gradually became “a military party” (Rouquie 1985:307), a core part of a changing multi-class alliance; the party was to be constantly involved in political fights. During these decades, the military also extended its control over the police and prisons within the federal and provincial states. In both cases, in the late 1960s and early 1970s, in the context of a social crisis caused by the exhaustion of import substitution combined with massive political mobilization, the military captured the government and initiated bureaucratic authoritarian regimes. These periods of military rule included the dictatorships of General Onganía and Lanusse from 1966 to 1973 and the military Junta from 1976 to 1983 in Argentina, and General Pinochet’s regime between 1973 and 1990. Through direct control, political pressure and ideological influence, the Army took over the penal bureaucracies and shaped them according to the military government doctrines of counterinsurgency. The military subordinated the police and prisons operationally and ideologically, and conditioned judicial work. This subordination of penal bureaucracies was greater in Argentina, due to its more pronounced history of military bureaucratic expansion in the previous decades in comparison to that of Chile.

Given these developments, in Chile between the 1930s and 1970s the wielders of military state power did not become dominant within the bureaucracy and in relation to the dominant economic, political, and judicial agents. Only in 1973 they suddenly acquired a dominant position during the last dictatorship, both within the bureaucracy and within their influence in the political, economic, judicial and penal-bureaucratic arenas. Correspondingly during the last dictatorship, the military agents did not occupy or replaced all dominant agents in the Carabineros and respected the stability of court members, while they remained aloof from the prison administration. In Argentina, the ascendency of the military over political, judicial, and economic sectors was earlier than in Chile and their expansion and control over penal bureaucracies during the last dictatorship was greater. Military officers took direct control of police forces, replaced judges, and commanded prisons and they completely militarized those bureaucratic sectors. The different trajectories of the military within the bureaucratic field and the political field will be essential to understand the configuration of the dictatorship and post-dictatorship penal fields and subfields as we will see later.

These military regimes implemented (in Chile) or began implementing (in Argentina) neoliberal pro-market changes in the economy, which put an end to the import-substitution policy in Chile and began to erode it Argentina, in both cases severely impacting the labor market and the metropolitan urban structure. The policy of “structural adjustment” began in 1975 in Chile, with massive and sudden changes in the economy and in the urban landscape of Santiago. Chile turned from a (weakly) industrialized economy to an export-oriented economy; it expanded its service sector and exploited its
natural resources more intensively. In this new economy, the labor markets where made more flexible and de-unionized (Silva 1993). In the 1980s, Santiago experienced a massive immigration from the central valley that followed the reacquisition of lands distributed during the land reform programs of the 1960s and 1970s and the new agri-business boom. The bourgeoisie moved to suburban enclaves while the urban poor were relocated to the south of the city, where the government launched a sustained investment in working class infrastructure in the working class and in the “campamentos” urban sectors that had been occupied during the Allende years. The middle classes became also less secure and more vulnerable. The new economy produced a small upwardly mobile faction and a large downwardly mobile faction. The downwardly mobile declined to share labor and social conditions similar to those of the working class, resulting in a more hierarchical social structure which limited upward mobility but allowed for greater lateral mobility, though under highly insecure conditions (Torche 2005). In the new urban landscape of Santiago, the older informal workers of the 1970s became small property owners. They began distinguishing themselves from the even more precarious and poverty and crime ridden sub-sectors occupied by those who recently migrated to the southern part of the city (Sabattini and Wormald 2003).

In Argentina, the transition to neoliberal economic regimes was initially not as abrupt as in Chile, but by 1976 the military government began freeing financial markets, reducing import tariffs, and leaving private industrial activity unprotected from foreign competition (Canitrot 1994). This produced a massive change in the economy, which began to veer from a mostly industrial and agrarian economy to one where services and primary activities acquired greater weight in economy, with a reduction of formal work and increased poverty and inequality. This initial economic transformation was continued in the 1990s with the privatization of most public companies, deepening the structural adjustment under the neo-populist administration of Menem (1990-1999) (Svampa 2005). In the last three decades, older patterns of suburbanization of the high- and middle-class sectors continued, in particular in new gated community developments. A great number of middle-class individuals lost their stable jobs, forming what has been called the “new poor,” with cultural resources and family practices of the traditional middle class but with labor insecurity and social protection levels similar to those of the working classes (Kessler and Di Virgilio 2008; Tironi 2003). The working classes became more informalized, with more flexible working regimes. The old urban poor were the most impacted by economic changes and the reduction of state welfare (Auyero 2000; Auyero and Hobert 2007). As in Chile, the Argentine social structure became more unequal, and the middle class sectors also shrank.

Finally, these two societies have experienced rises in recorded crime rates since the mid-1970s. Homicides went from 3.9 per 100,000 inhabitants in Argentina in 1980 to 4.8 in 1990 and .7.85 in 1996 and then down to 5.3 in 2010. In Chile, the homicide rate rose from 2.6 to 3.0 between 1980 and 1990 and then decreased to 1.5 in 2010 (Portes and Hoffman 2003:67). Property crime rates, as measured through reports to the police, also increased. In Buenos Aires, they rose from 540 per 100,000 in 1980 to 2,755 in 1995

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13 Between 1980 and 1990 homicide rates in Brazil increased from 11.5 to 19.7 (Portes and Hoffman 200:67). In the United States of American the homicide rate went from 9.7 in 1979 to 9.8 in 1990, and down to 4.8 in 2010 (Bureau of Justice Statistics 2011)
(Sozzo 2011), while in Chile, they went from 350 to 1,250 per 100,000 between 1977 and 2003 (Dammert 2005:18).

It is in these progressively more unequal and insecure societies that the democratic governments engaged in transforming the post-transition penal bureaucracies. However, these processes of bureaucratic change were not shaped primarily by the abstract forces of late modernity and the “culture of control” (Garland 2001) in the periphery, nor by abstract political rationalities (O’Malley 1997) endowed with mysterious efficacy. Instead, forces at play within the policing, courts and carceral fields are what drove bureaucratic change. The different structure of these arenas would refract, under specific directions, the demands for security and order in the fractured and more unequal post-authoritarian societies of Chile and Argentina, and the struggles within them would produce new police forces, courts and prisons. We turn now to one of the subsectors of the penal field, the policing field.

2.2. Postmodern, late modern and neoliberal police bureaucratic change in the south? Explaining change through a comparative sociology of policing fields

The concept of a policing field allows us to detect critical mechanisms at play to account for police-bureaucratic change. At the same time, it overcomes a number of limitations we find in alternative theoretical models of police change within the sociology of penalty. Addressing recent police change in Europe, Reiner (1992) presents a model where macro-social changes (social polarization and de-subordination) and cultural transformations (diversity) impact police professional concerns and lead to the introduction of new standards (i.e.: legal and financial accountability, managerialism, and community policing orientations). In this model, organizational changes result from the police organizations being “a social litmus paper, reflecting sensitively the unfolding exigencies of a society” (1992: 676). This reflective model, as O’Malley rightly observes, leaves an “enormous interpretive gap between the hypothesized operation of these global processes and the processes of public police reform” (1997:376).

O’Malley posits instead that new police organizational parameters (“consumerization of police-society relations with police officers as professional managers and community leaders” in the UK) are politically driven changes derived from the proliferation of new political rationalities and technologies (“ascendant neoliberal political rationalities and related social technologies of ‘new managerialism’”) (1997:367).

While O’Malley presents his model as “better able to locate and evidence the processes involved in police restructuring” (1997: 376), he doesn’t explain the differences observed between countries that followed similar political rationalities (Rose, O’Malley et al. 2006:100), or even the same technologies, as is the case of Chile and Argentina. He simply points out that such rationalities become articulated with “national political traditions” (O’Malley 2002) and that “politics is an open process of contestation” (O’Malley 1996:312), but doesn’t explain such political articulation or how contestation leads to changes in the police.

Garland tries to close these heuristic gaps by explaining police bureaucratic change as resulting from the mechanisms of political and cultural selection of
bureaucratic innovations guided by a bounded rationality. In his view, the new police’s “strategic functioning” (2001: 167) (centered in the US and UK around managerial rationalization and community participation) “originat[e] as problem solving devices [that] grow out of the practical experience of government agencies and their constituencies,” which are later on “validated” by the “political and cultural contexts” (2001:72,105) of late modernity. But, as I already argued, his ideal-typical representation of “administrative actors” and “political agents” (2002:111-2) does not explain the strategies adopted by concrete agents operating in specific penal domains while cultural and politico-ideological validation remain too vague as mechanisms. I propose a field theoretical approach to account for different paths of police development in similar socio-economic and ideological contexts (Reiner), as was the case of Argentina and Chile in democratic times, to explain how the same discourses impacted differently on bureaucratic police change, to account for what shapes “contestation” (O’Malley) over policing issues, to determine what actually orients the strategies of actors directly involved in reform, and, finally, to determine how political or other contexts “validate” bureaucrats’ or experts’ strategies. 14

The policing field: its structure, autonomy of police bureaucracy and intra-organizational struggles

Following the Bourdieusian field theory approach, I deploy the concept of the policing field to account for the introduction of new discourses and models, the emergence of police reform demands, and the different outcomes in terms of bureaucratic change in similar macro-structural and ideological contexts. I conceive of police bureaucratic change as resulting from struggles within the historically specific policing fields.

For Bourdieu, modern society “is an ensemble of relatively autonomous spheres of ‘play’ that cannot be collapsed under an overall social logic, be it that of capitalism, modernity, or posmodernity” (Bourdieu and Wacquant 1992). Each of these spheres, or fields, “consists in a set of historical relations between positions anchored in certain forms of power (or capital)” (Bourdieu and Wacquant 1992:17). Each field is a structured space—structured according to the distribution of field-specific powers—which grants authority and access to the profits at stake within that space—and by its rules and symbolic order (doxa)—and a space of “conflict and competition” between agents and institutions over preserving or increasing their share in the distribution of field capitals, accumulating capital or disputing the value of the current forms of powers in the given field. Finally, the positions of agents and their trajectory and habitus—a specific system of embodied dispositions—determines the conservative or revolutionary strategies of

14 Studies of Argentine police reform following these theories evidence the same heuristic gaps. When Gonzalez (2005) argues that the lack of reform in democratic Argentina derives from the combination of the “late modern conditions in the periphery” with a historically authoritarian criminal justice system, his analysis should also allow us to explain the divergent evolution of the Chilean police were those conditions were very similar, but it does not. Likewise, the Foucaultian argument that the liberal and authoritarian political rationalities embodied in Latin America police forces (Sozzo 2008a:262) prevented change in Argentina, cannot explain why the same liberal and neoliberal technologies contained in reforms toward rule of law, managerialism, and community policing were institutionalized in Chile and under the same rationalities.
agents, both of which may include reconversions—investing capitals accrued in other fields or positions, thereby creating new capital in a new field or a new position (de Saint Martin 2011).

I define the policing field as a historically specific bounded structure of hierarchical relations where more or less autonomous police organizations, competing bureaucracies (i.e., the military and intelligence bodies), political agents (the executive branch, political parties and other agents of the political field) and experts all vie over public policing policies. The policing fields are located at the intersection of the police sector of the bureaucratic field (Bourdieu 1992b), the juridical field (Bourdieu 1987) and the political field (Bourdieu 1991), and they border the academic and journalistic fields. At the center of the policing fields we find police organizations that monopolize the exercise of legitimate internal coercion and information-gathering (policing jurisdiction), and which follow values and missions that are distinctive from those of other organizations in the bureaucratic field. Police jurisdiction, in turn, may be controlled by one or many police organizations (Bayley 1975), and may hold varying mission definitions.15 At different moments the policing organizations occupy different positions within the bureaucratic field, in relation to other bureaucratic sectors, namely the military and the judiciary, and in relation to the agents of the political field.

As police organizations become bureaucratically independent and specialized within the bureaucratic field, they begin following distinctive ultimate values, which are neither truth-making (justice) nor victories (military), but are instead that of order, security, urban peace, “social defense,” “institutional power,” etc. In different contexts and periods, police forces may define themselves as servants of the law or guardians of state authorities, and they may follow specific systems of knowledge and expertise derived from other sectors of the bureaucratic field (i.e., the military) or from the professional fields (law, medicine, economics, etc.). The symbolic systems that have currency within the police organizations may present different combinations of mythological “narratives of heroism and martyrdom that serve to inspire defense of those values” and or explicit and coherent “theories of social and human order” (sociodicy) (Gorski 2011:13) involving “knowledge of regulations and applied techniques” (Weber 1958:200) with different degrees of coherence and specialization within the police organization. This organizational police culture tends to be more varied and malleable than the objective position of police organizations within the policing field, in particular in relation to the central government.

Within policing fields, police organizations present, at different moments, historically specific levels of relative independence or subordination to the executive branch and legislators, and, by extension, to the dynamics of the political fields and the interests of political agents. The executive branch and legislators constitute the central government, and are located at the intersection of the bureaucratic and political fields. The more cohesive, bureaucratized (merit-based hiring and promotion, strong specialization, and loyalty to the office) and stable the organization is, the more probable it is that commanding police officers, as such, will possess autonomous authority

15 Combining political dependency and its mission definition Emsley (1999) has identified three ideal-types of modern police bureaucracies: state civil forces, subordinated to central government and interested in urban order; state military forces, subject to central governments but interested in rural and political order, and municipal forces concerned with local economic order.
(Carpenter 2000) over policing policies. The more autonomous the police bureaucracies, the less can political agents directly project interests into the police bureaucracies. Under conditions of equilibrium between the police and the executive branch, policing policies and priorities are determined by both elite police bureaucrats and by political agents.

Both the subordination of the police organization to the central government (military or civilian) and to the judiciary or the military, within the bureaucracy, as well as the mission definitions and the discourses and knowledge considered legitimate within the police organization, are objects over which the organizations and agents of the policing field struggle. These policing field struggles take place along the relatively independent struggles that take place within the police organizations itself.

In this work the police organization itself is analyzed as a space with field-like properties (Bourdieu 2005b:217–219; Emirbayer and Johnson 2008), with more or less stable hierarchical positions among carriers of different types and amounts of capitals and an (evolving) organizational doxa. Within the organization, dominant agents vie for commanding positions and for the power to define the organization’s mission and policies in line with their interests and capitals. The capitals of the different groups of officers—incorporated or institutionalized bureaucratic cultural capitals of experience and specialization as well as intra and extra-organizational social connections and political allies—orient their actions in their internal competition over supremacy and recognition. These “[b]attles over definitions are clearly associated with battles over priorities, that is to say, battles over the pre-eminence to be accorded, in future plans, and the restructurings they necessitate, to a particular function […] or to a particular officer” (Bourdieu 2005:217).

Within the police bureaucracy, as in any field, we expect to find a pole constituted by those agents claiming the right to control the force by defining it as a judicial organization, working for judicial authorities, involved in judicial investigations and objectively opposed to those groups who define it is an instrument of political order wishing to invest in capacities to serve political masters (Monjardet 2010 [1996]:166-167). Between these poles one usually finds a third middle group of administrators in charge of running logistics, managing personnel and, increasingly, long-term planning. Within the “field of power in the organization” (Bourdieu 2005b:218) we are to find, in particular in moments of crisis, the formation of strategic alliances of agents that favor new definitions and priorities that give more value to their functions and to specific types of bureaucratic-police capital. The organization, with its dominant and dominated fractions, presents a structure that is homologous to that of the policing field and to that of the space of police forces (with dominant and subordinate police forces). These series of homologous structures are at the basis of the alliances between dominated police officers within each organization, the top-managers of dominated police forces and the dominated agents within the policing field, aligned against the dominating intra-police fractions, leading the dominant police force and allied with the dominant agents of the policing field.

We can represent the structure of the policing field (see figure 2.1) along a vertical axis that denotes overall authority over policing policies of each of the different agents, and differentials of power between positions; and a horizontal axis that denotes the practical orientation of agents. Agents oriented toward formal law enforcement and judicially oriented work occupy the more autonomous sector of the field, to the left, and
agents who act oriented by extra-police concerns, such as political, military, or journalistic interests, the more heteronomous sector, to the right. The police organization is located vertically according to its control over policing *bureaucratic authority* vis-à-vis other agents and horizontally according to its mission definition (law enforcement or political policing). Bureaucratization and coherence (vertical integration within the organization) is represented by the height of the rectangle and *bureaucratic autonomy* is symbolized by the openness of the lines of the rectangle that represent the police forces within the bureaucratic field.
Figure 2-1 Schematic structure of policing field

[Diagram showing the relationships between different fields and factions in the policing sector.]

- Police sector of bureaucratic field
- Space of police forces
- Dominant fraction of officers
- Dominate fraction of officers
- Executive Branch
- Legislature
- Law enforcement orientation
- Politico-economic concerns

Formal law enforcement orientation

Politico-economic concerns
The demands to introduce new discourses and models in each period (i.e., “law enforcement,” “national security,” “managerialism,” “community policing” or “zero tolerance”) come from agents in different locations of the policing field. The road from the initially proposed changes to effective organizational change is long and complex. To understand the impact of reform proposals on bureaucratic change, I take into account the system of tensions, interests and power bases that favor their adoption, opposition, or abandonment. I argue that the observed evolution of the police in Chile and Argentina derive from the converging effects of (a) fights between central government agents (with different governing strategies) and the police organization (with different degrees of subordination to the central government and bureaucratic-based-authority) over the direction of each police force; combined with (b) struggles between groups of police officers fighting for supremacy within the organization and (c) struggles between police forces to capture greater participation in the space of police institutions within the police sector of the bureaucratic field. The outcome of struggles will depend on the balance of forces, or the power differentials of agents favoring or repealing reforms in the three realms of intra-bureaucratic, inter-bureaucratic- and bureaucratic-central government relations. The position-takings regarding “reform” will be determined by the positions (and dispositions) of agents within organizations, the position of police organizations within the space of police institutions, and the position of police organizations vis-a-vis the central government, as well as the position-taking of the executive branch determined by his position in the political field and the dispositions he brings to office.

2.2.3. Police autonomization, the space of police forces and the different paths of police reform in Chile and Argentina

The explanation is divided into two parts a first, objectivist moment and a second, more strategic one. In the first moment, I document how the police organizations acquired different degrees of autonomy from the executive branch and from legal authorities in each country. I also examine the internal police fractions within the organization, as well as the balance of power between police organizations in the space of police forces at the moment of transition. This reconstruction begins with the initial consolidation of each police force within the national bureaucratic field in the early 1930s and concludes with the end of the dictatorship in the 1980s (1989 in Chile and 1983 in Argentina). Throughout this period I trace how the Chilean and Argentine police forces, which appear to be formally similar, acquire very different locations in the hierarchical relations of the policing field, with different degrees of autonomy from the central government. These different locations in the space of police forces, and the historically constituted dispositions of the police elites, will determine different position-takings in relation to demands of the executive branch (and expert allies) to reform.

In the second moment, I turn to a strategic analysis where I trace offensive and defensive strategies of agents to explain how it is that the Carabineros and the Investigative Police in Chile and the Argentine Federal Police and National Constabulary evolved so differently. As I show, within the Carabineros, the ascending management specialist officers (fighting the counterinsurgency experts) engaged in a dual strategy of generalization of their know-how within the force and a self-defensive reform of the organization in reaction to the advance and attacks of the central government. They engaged in this double strategy so as to preserve the autonomy of the organization from
the central government and rebuild the prestige and public recognition of the Carabineros in democratic times, buttressing against the attacks of the central government and allied experts. The Investigative Police (dominated within the space of police forces and more heteronomous than the Carabineros) changed after 1992 under orders of the executive branch. The more docile Investigative Police high-officers collaborated to obtain more resources and acquire a greater share within the space of police forces. In Argentina, the highly heteronomous police forces were initially changed by the executive branch during the first and third democratic administrations, in a similar pattern to that of the Investigative Police in Chile, but the executive branch that followed these reformist administrations reversed reforms. This outcome stands in contrast to the Chilean case, where executives continued to back the reforms toward legality and accountability in the successive democratic administrations of Allwyin (1990-1994), Frei (1994-1999) and Lagos (2000-2006). The different orientations (dispositions) of the executive branch (determined by the volatile political system), combined with the docility of top-police bureaucrats, explains the failure of reform in the Federal Police and the National Constabulary of Argentina. (For a summary of the reform proposals and the organizational developments see table 2.2).
Table 2.2. Police reform programs and evolution in Argentina and Chile (1985-2005)

<table>
<thead>
<tr>
<th>Police Organizations</th>
<th>Before reform struggles</th>
<th>After reform struggles</th>
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2.3. Between politics, the military and the law: degrees of police autonomization and different paths of police reform in Chile

The police forces of Chile are the Carabineros de Chile and the Investigative Police. The Carabineros is the biggest police force in Chile, in charge of political and urban order and law enforcement in the entire national territory (1980 Organic Act). It shares public policing functions with the smaller Investigative Police (Policía de Investigaciones), which has been historically in charge of criminal investigations and secondarily of political policing. Since their creation in the 1920s and until the recent democratic era, the Carabineros budget and personnel has always been almost ten times bigger than the Investigative Police prior to the recent democratic era (see table 2.1). These two forces, are not only different in size but, within the space of policing forces, they acquired very different levels of autonomy from political agents and from the military since their creation, the small Investigative Police becoming much more docile to the central government before and during dictatorship and the Carabineros developing a much more combative orientation against military interference during dictatorship and later on political interference after the return of democracy. This produced two different paths toward reform in democratic time. To understand those paths we need to go back to the genesis of the objective conditions and dispositions conditioning the struggles for reform in democratic times.

2.3.1. Police in Chile (1930-1972): professionalizing away from politics and the military before dictatorship

Policing in Chile goes back to Spanish colonial times (Miranda Becerra 1992), but their current institutional form originates in the shift from a system of local police forces—which followed the British model—to a unified and centralized system in the late 1920s—inspired by the French Gendarmerie model in its Italian version (Miranda Becerra 1992). The unification of the police culminated in 1927 when the Carabineros de Chile and the Investigative Police were merged. As Bailey (1975) predicts in his study of police evolution in Europe between the seventeenth and nineteenth centuries, political centralization propelled police centralization. The new middle-class Radical Party, led by Arturo Allessandri, was intent on depriving the landed aristocracy from controlling local police forces to win elections. In the 1920s this converged with the army generals, interested in expanding their power and know-how over the other state sectors that had historically been in the hands of the aristocracy (Fernandez 2003). In 1924, Allessandri unified local police forces under a National Police Directorate, and merged a number of military regiments in charge of internal order into the Carabineros regiment. In 1927 General Carlos Ibañez, War Ministry, Interior Ministry, and Commander in chief of the Carabineros the Carabineros Army Regiment, merged that regiment to the National Police. The merging involved the Gendarmerie Regiment created in 1902, with jurisdiction over the central and northern regions of the country. In 1907, General Körner, the Prussian officer leader of the military mission, supervised the fusion of the Regimiento de Carabineros with the Colonies Gendarmes—a force created in 1896 to combat banditry in the southern frontier (Aguilar Zuniga and Maldonado Prieto 1996; Miranda Becerra 1997).
Police Directorate, forming the Carabineros de Chile (Aguilar Zuniga and Maldonado Prieto 1996; Miranda Becerra 1997:302).  17

The power of the military officers within the Carabineros and the interests of the central government in creating loyalty toward the nation instead of local bosses produced a force highly militarized in its organizational design and mission.  18 Army officers, trained after Prussian models, occupied the dominant positions within it, whereas the “pacos”—as members of the old Santiago police are called—were displaced to secondary positions. The new police was placed under the shared control of the Interior and War Ministries, and could be mobilized for war if necessary.  19 The training of the officers followed the military academy’s pedagogy and training, while police personnel enjoyed military justice privileges. Originally, acting army officers could be stationed in any police position at any time, and the Carabineros were considered to be one of several steps in a military career, and an important one indeed.

The former dependence on local politics was replaced very early on by involvement in national politics. Under President General Ibañez (1927-1931), the Carabineros became the backbone of the first police state in Chile, and of the highly authoritarian administration of Alessandri (1932-1938). However, after the fall of General Ibañez in 1932, the military started to lose its practical and symbolic supremacy over it as the military were excluded from the political field and its jurisdiction over the bureaucratic field remained bounded to the military functions until the late 1960s. Later political tensions between the executive branch and the military led to the final separation between the police and the military within the bureaucratic fields. This allowed the Carabineros to develop their own professional bureaucratic know-how independently from the military, and to obtain a share of the national budget over the following decades that would almost equal that of the army. It also became relatively independent from party politics over the next four decades after 1931. Political agents and military and police bureaucrats began adopting a doctrine of a-politicism, according to which the military and the police would obey the government but remain away from politics.

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17 This transformation of the police, besides centralizing power and reinforcing the executive branch, is part of a more general technocratic rationalization of public institutions combined with a process where a “generation of middle class professionals, many of them engineers and army officers displace the old political class from public decisions” (Correa et al. 2001:104). The Carabineros is one of many other institutional developments, such as Air Force, the General Comptroller, the subordination of education to the Ministry of Education, rather than the University of Chile, the public employees’ ordinance, as well as an expansive participation of the state in the economic realm within the import-substitution industrialization model.

18 The military in Chile got professionalized since the 1880s, under the inspiration of German missions, which replaced the more republican-oriented French military missions. The participation of the military in internal order started very early in 1887, and the presence of military personal commanding the city police of Santiago, started in 1906, when the Director of the Military Academy, Lieutenant Colonel Bravo Lira, is named police chief, starting the ‘era of military prefects’ within the police.” (Aguilar Zuniga and Maldonado, 1998)

19 This process of military occupation of the police was sponsored by the Army Chiefs of Staff, that studied and copies the Italian Royal the Carabineros organization, producing a detailed report in 1927. In 1924 the Army Chiefs of Staff ordered the Chilean Army attaché in Italy, a Prussian officer himself, Mayor Otto Naschold, a detailed report on the organization of the Italian police. Naschold, among other things reports that “in case of war, the army will count with a respectable number of men, specially formed and trained, as are the Italian Royal Carabineros” (Naschold 1927:6). The report also argues that this it is all the more important given the continuous attempts of politicians to “destroy the army”.
Ensuing struggles between political parties and the displaced military in the political fields which have repercussions in the bureaucratic field produced greater distance between the Carabineros and the Army. The civilian and pro-democratic movement that removed General Ibañez from the presidency removed army officers from the commanding positions of the Carabineros. The Carabineros ceased to be considered a military post.\(^{20}\) Alessandri also removed the Investigative Police from the control of Carabineros, and put it under direct control of the executive branch (Hernandez Ponce and Salazar Gonzalez 2001:27). While the initial de-militarization and de-politization of the Carabineros continued between 1938 and 1952, under the Popular Front administrations, the Investigative Police remained subordinated to political agents, and in charge of criminal investigations and political intelligence.

The Popular-Front fostered police political neutrality between 1938 and 1952, orienting it toward law enforcement. The Carabineros was removed from the War Department and put under the Interior Department. Military-style discipline was combined with legal training, and the police started to claim exclusive jurisdiction over preventive policing and public order, excluding the military from internal order. Very soon police officers started to conceive of themselves as “gentlemen of the law” (Muñoz Sepulveda 1942:18)—trained in legal knowledge, i.e.: criminal, constitutional and administrative law, police procedures, special laws (Carabineros 1940; Carabineros 1941), along with weapons’ handlings, horseback riding, boxing, and fencing.\(^{21}\) Displacing the military from internal order maintenance the Carabineros expanded their jurisdiction during the Popular Front period, taking charge of repressing revolts, factory strikes, rural unions and finally, in 1946, assuming anti-communism as part of the police jurisdiction.

The Carabineros continued their detachment from party politics and electoral interests within the policing field and preserved their independence from the military within the bureaucratic field between 1952 and 1972. The transformation of the Chilean political system toward a more technocratic and presidentialist system favored this continuity. The second Ibañez’ administration (1952-1958), the liberal experiment of Jorge Alessandri (1958-64), the reformist Christian Democratic presidency of Frei (1964-1970) and the socialist regime of Allende (1970-73) all abandoned the traditional practice of governing through negotiation in parliament, instead adopting a more self-sufficient style based on the executive control over the administration. The executive branch became more powerful, mainly through control of the budget (Valenzuela 1996),\(^{22}\) and it

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\(^{20}\) The civilian movement that removed Ibañez in 1931 put in charge of the police a former chief of the civilian Santiago Police, Concha Pedregal, expelling all the Carabineros officers who were deemed followers of the dictator Ibañez (Aguilar Zuñiga, Maldonado Prieto 1996: 11). Against the Army’s objections, Alessandri, in 1933, put the civil brigades formed during the transition to democracy in 1931, under the supervision of the Carabineros.

\(^{21}\) During the administration of Juan Antonio Rios, officers and subordinates got more thoroughly trained in legal matters (Carabineros 1941b) while in 1942, the first Carabineros’ Officer’s Field Manual was published, dealing with “professional-technical” issues, and vocational and moral matters (Muñoz Sepulveda 1942).

\(^{22}\) The greater power of the executive can be seen in the monopolization of budgetary functions and the longer term of technocratic cabinets. With Jorge Alessandri the Executive was given the power to control the budgetary process, through the recently created Budget Directorate, restricting the role of congress in allocating payments, the basis of clientelist networks. During the Frei administration, the president deprives
acquired greater direct control over an expansive administration (Correa Sutil, Figueroa et al. 2001).

These technocratic and highly ideological executives distanced the police even more from political parties and the army and put it closer to the executive branch, while reinforcing highly formalized bureaucratic patterns of recruitment, promotion, and internal specialization. The technocratic approach of the Executive branch, which resorted to technical elites to back and legitimize political decisions (economic liberalism was the ideology used in the case of Ibañez and Jorge Alessandri, and reformism in the case of Frei) coincided with the diffusion of new professional police expertise by US foreign police trainers and of managerial experts in the administration in the context of the Cold War. US anti-communism found eager collaborators in the Chilean executive branch, but also in the Carabineros, who were interested in preventing the military from returning to internal order, and willing to invest in organizational skills and capacities. During this period, however, younger officers in the Army (and the Navy), began introducing counterinsurgency security doctrines that demanded military intervention in internal order maintenance, especially in combating communism and insurgency (Vargas and Aguero 1979; Gutierrez 2011). This tension between the willing counterinsurgency experts in the army and the Carabineros police elites continued throughout the 1960s and into the dictatorship period, structuring the relations between police and the military.

Starting in the late 1950s and continuing into the early 1960s, counterinsurgency specializations, intelligence and riot control were solidly institutionalized within the Carabineros, especially through the creation of the new riot police, mountain, communications and transport units. These techniques were learned in US military academies, including the Panama School of the Americas (Huggins 1998:104–112). US models were also followed in the police administration realm, in particular during the Alessandri presidency, when the position of administration officer became a separate career within the force. “Administration officers” received special training in “internal accounting, fiscal accounting, financial mathematics, and cost analysis” (RC, May 1963, 45). The budgetary rationalization following monetarist policies under Ibañez and Jorge Alessandri favored this internal fraction. This administrative fraction also introduced public relations know-how and developed planning organs and capacities. In 1961, the Carabineros created a “Technical Assistance Office,” in charge of studying and planning for unified innovation, and introduced public relations and civic actions programs. Public

Congress to decide on funding for special projects, the core element of negotiation between parties (Valenzuela 1996:33–34).

23 In the period between 1940 and 1973, state personnel expanded dramatically It went from 45,000 in 1939 to 71,000 in 1955, 270,825 in 1970 and up to 380,000 in 1973 (Correa Sutil, 2001:184).

24 In repressing the protests that followed the structural adjustments program of President Ibañez (1952-1958), the Carabineros inaugurated US police riot-control techniques, and the army remained in the barracks as the President Ibañez del Campo wanted to leave his dictatorial style in the past.

25 The riot control unit, which has been created in 1954, was re-organized and given a general ordinance by Mayor Segundo Díaz Llave, a graduate from the Inter-American Police Academy, in Fort Davis, Panama, and turned into an independent group in 1966, called “Mobile Group” (Miranda Becerra 2001:66–67).

26 The progressive ascent of the administrative sector becomes made evident in a series of articles praising their relevance within the organization but also putting them into their place, warning that “even if administration is essential, as command in ultimately based on money… the man who exercises command must be careful that administration does not ever overcome commanders, and thus, that an administrative domination gets established” (“Principios de Organica,” in RC, January, 1958: 16-17).
relations were copied from the private sector companies, and specifically from private research centers designed to “impart modern knowledge and adequate techniques in human relations, production relations and finance.” These public relations programs were matched with programs of civic action sponsored by USAID to legitimize the police in the eyes of population.

This bureaucratic specialization and professionalization— with police officers academies, mid-careers schools, and high-office police academies; the strict division of police labor, with internal specialization in criminal investigation, security and administration, merit based careers— received legal recognition through a general statute, the “Ley Organica” of 1960. Crucially, this statute declared explicitly that the Carabineros composed a civilian force. Officers received training for different specializations in initial and mid-career courses at the officer’s police academy. These planning, budget, and public relations departments provided the organization with a capacity for self-direction, which become essential in the budgetary and political struggles of the years to come. These organizational capacities were in turn accompanied by an increase in the Carabineros’ budget, which became equal to that of the Army circa 1972, and was ten times bigger than that of the small Investigative Police.

| Table 2.3 Organizations’ share in the combined military and police budget (1952-1972) |
|-----------------------------------------------|----------------|----------------|----------------|----------------|----------------|
| Army                                         | 28.7           | 23.40          | 27.8           | 27.5           | 25.9           |
| The Carabineros                               | 28.6           | 21.70          | 23.8           | 20.7           | 25.8           |
| Investigation Police                          | 2.9            | 2.60           | 2.8            | 2.6            | 2.3            |
| Navy and Airforce                             | 39             | 50.00          | 45             | 49             | 45             |


By the early 1970s, we can distinguish three core groups within the high-ranking Carabineros, based on the training, specialization and seniority. First, the dominant group, that which I call “gentlemen of the law,” are from the older generation, followers of the bureaucratic orthodoxy of political neutrality imposed by political parties and the executive branch since the 1930s. Subordinated to the gentlemen of the law are the

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27 See RC, January 1959: 59 “The relevance of public relations within the Carabineros.”
28 The civic action programs include sanitary and alphabetization campaigns, a female brigade, police stations devoted to take care of poor minors, soccer tournaments, police scouts groups, and control of forest fires.
29 Within the educational police system, after a common initial training, officers became specialists in one of nine branches (trainer, pilot, mountains, intelligence, special operations, drugs, criminal investigation, mounted police and traffic), after which they are sent to the corresponding departments. They got promoted through the ranks passing highly competitive examinations and qualifications boards that periodically evaluate their performance and training.
30 The Officers Academy created in 1927 and the High Police Academy, in 1941, added within the “professional curricula in the 1960s “tactics and technique of public order control,” and “public relations,” which will be separated from the “legal studies” series. In the police academy new military training facilities and a “crowd control field” was built. The High Police Academy directors updated the programs, for mid-career officers (Miranda Becerra 2001:87–95).
younger new “counterinsurgency experts,” trained in anti-guerrilla fighting and closer to the military in technical and ideological terms. Finally, we find the “managers,” the specialists in administration and planning, also in a subordinate position, but closer to the gentlemen of the law in their views on the political neutrality of the police. Despite differences in seniority and training, all three groups accepted the doctrine of political neutrality and professionalism during the convoluted 1960s and early 1970s, up through the last months of the Allende regime.

During Allende’s government, the Carabineros acquired greater political salience and found themselves directly involved in the escalating fight between the Supreme Court and the president. Allende reduced police repression capacities, threatening the organizational bases of counter-insurgency experts disarming anti-riot units such as the Mobile Group. The Carabineros did not openly question the regime, even if Allende re-politicized the force by preventing the Carabineros from following judicial evictions orders (Correa et al. 2001:266). At the same time, in early 1973, and in order to counter the advance and threats of the military, Allende designated Carabineros’ officers to the cabinet, in the Land Ministry. These measures contradicted the gentlemen of the law’s professional ideology of a-politicism and altered the internal balance of power, prompting the dominated factions, in particular the counterinsurgency experts, to collaborate in the coup that put a military-police junta in power on September 11, 1973. General Mendoza Duran—with a career in the horse-Jumping team, part of the Police Cavalry Units, and training in counter-insurgency—became General Director. This alliance between the police counterinsurgency specialists and the Army produced an operational and symbolic de-autonomization of the Carabineros during the dictatorship.

2.3.1.a. The Carabineros during the dictatorship: political subordination to the army commander along resistance to the bureaucratic advance of the military

During the seventeen years of military dictatorship (1973-1989), the Carabineros General Directors were part of the military junta, sharing political power with the armed forces. The Investigative Police was not part of the Junta. However, even if many of the Carabineros high officers temporarily converted their bureaucratic positions into the most important governmental positions and participating in the Junta and obtained posts in the central administration, the political power of the Carabineros within the junta was subordinate to that of Army Chief, General Augusto Pinochet. During the dictatorship, the Army acted as a political master, enrolling the police in implementing the authoritarian regime but also as a bureaucratic competitor over coercive internal order functions. In a regime wherein coercive power was the most important political capital, the army rapidly reduced the bureaucratic power of the Carabineros. However, both the organizational capacities and acquired professionalism developed in the previous decades conditioned the political and bureaucratic subordination to the government and the military. Even if the army expanded its role in maintaining internal order, it was unable to completely subordinate the Carabineros, operationally and ideologically within the bureaucratic field. The Carabineros elite eventually reacted to the military jurisdictional encroachment, combating its advance and progressively counterattacking. The Carabineros elite developed new managerial know-how, combined it with urban crime
prevention and protests control, and used its political power in the political field to protect its jurisdiction and logistical capacities in the bureaucratic space.

Table 2.4. Military and police participation in Chilean budget (1970-1987)

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<td>4.90</td>
<td>6.5</td>
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Source: Scheetz (1985) and National Statistics Institute of Chile for 1987

The Carabineros were put under the War Department and the organization became more subordinated to politics than it had been before the dictatorship in terms of mission, high-officer careers, organizational structure and operational activities. Political subordination and bureaucratic competition with the military led to a reduction of its personnel and budgetary participation, and a loss of its dominant position in maintaining internal order.

Even if the Carabineros participated centrally in political repression throughout the seventeen years of the dictatorship, it soon began sharing functions with the armed forces, including the army and the newly created National Intelligence Directorate (DINA)—a special intelligence and repression organizations which Pinochet controlled. At the beginning of the dictatorship, during the first months after the regime, the Carabineros were responsible for the majority of deaths and detentions for political repression, however, this role was rapidly taken over by DINA, created in 1974 (Policzer 2008). After 1974, and up to 1989, DINA was responsible for the majority of political killings, even if the Carabineros were responsible for its share. DINA was turned into the National Intelligence Commission (CNI) in 1978, centralizing military political repression. Still, after 1977 the Carabineros continued to hold responsibility for the detention of the greatest number of political suspects and for the majority of urban control operations. Between 1977 and 1989, the Carabineros were responsible for 37% of political documented detentions while DINA was responsible for around 35% (Comisión Nacional sobre la Prisión Política y Tortura 2004:251).

The Carabineros increased its personnel by 10.8% in the first two years of the military regime, and 10% more in the next six years. In the same period, the military personnel increase 41% the first year, and 65.1% more in the following six years (19,000 the first year and by 10,000 more in the next five years). During the five years prior to the coup (1969-1973) the ratio of personnel in the Carabineros to that in the Armed forces was about .75. In 1979 the ratio was of .50. In terms of budgetary participation the differences are even greater. In 1974 the Carabineros’ budget was about a half of that of the army. In the next five years it was reduced to a third. In the first year after the coup the Armed Forces increased its budget by 35%, whereas that of the police increased in only 5% (see Thomas Scheetz 1990).

According to the official Truth Commission report of 1991 the Carabineros were responsible for most killings of political detainees between September and December of 1973 (308 over 544 known cases). After that period, DINA was reportedly responsible for 324 over 524 known cases, and the Carabineros of only 45 of them. According to the same document, the Carabineros, and in particular the Intelligence directorate systematically passed the political detainees to DINA (Comision Nacional de Verdad y Reconciliación 1991:II,579)

They repressed demonstrations and engaged in raids to fight the mobilized dwellers of poor neighborhoods; they even fought radical left-wing groups that emerged in the early and mid-1980s. In 1979, the Left Revolutionary Movement (MIR) became active again after it retreated with the coup and the
During the first ten years of the dictatorship (1974-1984), the counterinsurgency experts became dominant within the Carabineros, redefining the official mission of the police toward political policing and state security. At the symbolic level, three new disciplines were overlaid unto the previous police doctrine: national security doctrine and geopolitics, constitutional law and doctrine, and administrative managerial know-how. These new disciplines would be used to re-rationalize the organizational mission and practices, providing a new definition of the police.

The counterinsurgency experts built a new definition of the police—not as a law enforcement administration, but as “organ of the state.” This new point of view considered the state from the perspective of geopolitics, a supra-human organism, that monopolized “public force” to warrant a trascendental “institutional order.” The new high command diffused geopolitical and national security throughout the whole officialdom and incorporated it into the officer’s curricula, extended it to the ranks through internal orders, and publicized it through the police house organ. Along the

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Manuel Rodriguez Patriotic Front (FPMR), a radicalized sector of the left wing parties in 1983 launching military operations and social mobilization campaigns against? In 1983, a special Intelligence Communications Directorate (DICOMCAR) was created within the Carabineros in 1983 to face massive protests in Santiago. However, all units participated in detentions, with thousands detained and tortured in police stations. Urban poor settlements (“campamentos”) were periodically invaded by the police and the military through massive raids where urban sectors were surrounded and literally occupied, detaining and removing arbitrarily all men above the age of 16 (Colectivo Memoria Histórica Domingo Cañas 2005). Houses were searched, robbed and threatened, and many suffered tortures while incommunicado in the hands of the police (Comisión Nacional sobre la Prisión Política y Tortura 2004:249–251).

In March 1974, the “Declaration of Lines of Action by the Junta,” explicitly posits that the Police will be in charge of Security, protecting citizens’ rights and the elimination of every attempt to subvert public order.” RC, March 1974. See also RC, February, 1974 “Our Near Future”, interview to the Director. RC, May 1974 “Terrorist threat.”

Followers of Geopolitics saw states as living organisms, subsuming within it political, economic, legal and military knowledge within a higher-level synthesis that provides guidance for political actions oriented to preserve the integrity and power of the state-organism (Tapia Valdés 1980:26–36) The adoption of geopolitics is certainly connected with the fact that the Chief of the Army, Pinochet, had written a number of works on that same discipline, following both German and Spanish (Franquist) authors.

In 1974 the High Police Academy organized the first course on National Security and Land War—still in place in 1986. The aim of the course was to “provide the future generals of the Carabineros with concrete notions of National Security and the fundamental aspects of Land War, in order to facilitate the coordination with the Armed Forces in the common tasks of national interest” (Carabineros 1974: 2). The course included National Security, Organization, Intelligence, Tactics of rural and urban counterinsurgency, psychological warfare, army functioning, and included visits to military facilities. By 1979, the High Police Academies incorporated in its curricula, English, Math, Geopolitics, Politics and International Relations, Planning, Sociology, National Security and Development, Informatics (RC, January 1979 “El Instituto Superior”).

The Reserved Circular # 13, of August 8th, 1974, on “National Security and Security Police,” ordered that its content be discussed in the daily academies in the police stations. Officers and subordinates were made part of the national defense objective oriented primarily to “assure the survival of the state within the international community” (2). In this same circular the police was given security police functions but also “military functions,” such as “participating in the National Security Council, military intelligence and information, military police, prisoners’ custody and borders’ protection” (10).

See RC, May, 1974 “Introducción a la Geopolítica” by Jacques Mirabec, a pseudonym of Leutinent Diego Miranda, long time historian and mayor ideologist in the Carabineros, trained in US military School in Panama in 1953 (Interview, Diego Miranda, 14 July 2009). Chief of the Army, Pinochet, had written a number of works on geopolitics following both German and Spanish (Franquist) authors.
introduction of geopolitics and counterinsurgency, a “mythologization” (Gorski 2013:313) of discourse and practices took place, emphasizing patriotism and love for the motherland (See RC, April 1974). The second core ingredient of the new police doctrine was the notion of “institutional order,” a realm that transcended all other powers and which, according to the 1980s Constitution, the Carabineros and the Armed Forces were in charge of warranting” (Ch. 90, Political Constitution of 1980). The Carabineros, however, began also incorporating managerial tools and conceptions besides these publicly held definitions centered on national security.

Increasingly, the dominant counterinsurgency experts began favoring the administrative specialists, the managers, to face the constant attacks from the executive branch, who wanted to weaken the Carabineros. The counterinsurgency experts and the ascending managers began incorporating the capacities of political analysis and control, copying the military, and turning the old “Technical Council” into the “Superior Advisory Command” (CAS), 39 — this body will then become central in fighting Pinochet and the democratically elected central government after dictatorship. High-echelon police officers, running public enterprises, were the first to resort to “new techniques and knowledge about Economy, Management, Industrial Relations, Personnel Administration, and related sciences (RC, December, 1973 “Visita a Complejo Ventana”). In the late 1970s they combined traditional administrative knowledge with “project evaluation” expertise they had obtained at the National Planning officer (ODEPLAN).

Since 1975, ODEPLAN has been taken over by economists trained at the University of Chicago, who economically rationalized the administration by mandating that every government program and budget petition be subject to “social profit” (cost-benefit) evaluations, following “project evaluation” formats (See Fontaine 1997). As the executive branch began reducing the police budget and personnel—but not the army budgets—and planned on reducing its weapons and other resources, 40 the managers developed their own managerial know-how to deal with personnel reduction and budgetary freezes imposed by Pinochet between 1977 and 1979. By 1980 they developed studies based on project evaluation (See CIAPEP 1981), in collaboration with ODEPLAN, to be able to ask for increases in their impoverished budget and preserved their operational capacities, the bases of their power. In 1982, Rodolfo Stange Oelckers, an expert in police management, became deputy chief. 42

39 The CAS advised the Director, developed organizational planning and development, regulations, information, and the direction of special services such as great demonstration. See RC, January 1979, “El Comando Asesor Superior.”

40 In the late 1970s the army attempted to deprive the police of heavy weaponry, to create police municipal forces, and to put the control of private police in the hand of the army. It also ordered the Carabineros to put political prisoners in the hands of the National Intelligence Directorate (DINA). On this struggle see Frühling (1998)

41 In these studies they determined the required number of police stations, vehicles, and personnel that would “produce” the same level of surveillance with a fixed quantity of resources. For the first time they quantified security production, and produced extensive cost-benefit analyses of increasing personnel and resources (CIAPEP 1981).

42 Stange Oelckers came from family of police officers, has passed through the administration ranks—studied police administration in Germany in the 1960s and directed the National Copper Company (ENAMI) after the coup. He also had sufficient counter-insurgency credentials as he studied national security in the 1970s, specializing in strategic planning.
The managers finally took partial control of the General Directorate after a fight between CNI and the Intelligence Directorate of the Carabineros (DICOMCAR) led to the resignation of General Director Men doza Duran—from the counterinsurgency fraction—in 1985. Director Stange Oelckers kept the counterinsurgency and political repression mission central, but combined it with a managerial framing and a progressive orientation toward common crime in the late 1980s. He left counterinsurgency specialists in directive positions, but removed many of them, who were directly involved in human rights abuses, to prevent accusations of human rights violations from damaging the image of the force (Interview with Jorge Correa, Interior Ministry, July 2009). At the same time he reinforced managerial and planning capacities of the police.

The managers took hold of the Superior Advisory Command and the High Police Academies, and began developing cost-analyses to assure the same “levels of production of security with a limited personnel and resources” (Carabineros 1990). By 1985 the concern for the “social and economic profitability of preventive policing” was incorporated as official doctrine. Not only high-echelon officers were using the language of management. Beat officers were mandated to produce statistics to evaluate their performance in relation to controlling the “behavior of both criminals and/or subversives” (Carabineros 1986a:26). Beginning in the mid-1980s the ascent of the managers, now beginning to share power with the counterinsurgency specialists, began to get reflected in a new definition of the police, as an efficient provider of police “services,” including political repression. Officers in the police academies studied these new evaluation techniques and had to pass strict exams to advance in the hierarchy. The higher ranks, the colonels, had to take special courses on police administration and planning, and by 1986 high command officers stopped taking mandatory courses at the Army National Security Academy (Jacoby Sanchez 1986:25–26) to access high police positions, replacing the military know-how by their own formalized know-how.

These progressive symbolic autonomizations from the military within the bureaucratic realm ran parallel to a progressive political de-subordination from the General Pinochet in the last years of dictatorship. Between 1985 and 1990 the

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43 General Alegria, former Director of Intelligence and Personnel became Deputy-director. The Director of Order and Security, Torres Rodriguez, the core operative position within the force, combined his career in the ranks, with training in the CIA International Police Academy in 1970, and studied police intelligence in the US and the Panama Canal Zone in 1981. He also graduated from the Army Strategic and Political Studies High Academy. The next Deputy-director, Gabriel Ormeño Melet, was also an expert in counterinsurgency. In 1985 he was instructor on national security and land war in the High police academy. Correa’s statements coincide with 25 Coroners retiring a week after Stange became director (RC, August, 1985).

44 In a 1985 the Order and Security Director, in charge of organizing patrolling and public order maintenance, stated in the house-organ that “in its preventive role the institutional policy is to optimize the use of human and material resources to prevent crime, and to encourage personnel to understand the extraordinary importance of this activity and the great social and economic profitability of its repressive role” (RC, May 1985, “La doctrina Institucional y su relación con el orden público”, emphasis added).

45 In their “performance reports” about wealthy neighborhood of Las Condes, beat officers described most residents as their “main clients,” whereas in the middle class neighborhood of Nuñoa, where the rebellious Universidad de Chile is located, the consumers were the public and merchants, who had to be protected against common criminals and radicalized youths. In the poorer southern neighborhood of Conchali most residents were not clients but “targets” involved in “petty crime, terrorism and revolt” (Carabineros de Chile 1986)
Carabineros aligned themselves with the dominated factions of the Junta, starting with the Air Force. In 1986, Pinochet’s man in the Under-Secretary of the Carabineros—the office of the Defense Department in charge of the Carabineros—was removed, and Stange put into place one of his acolytes. The same year, Stange agreed to reform the Constitution and soften political repression, to the point that the army had to create and deploy its own anti-riot unit, the “Anti-subversive Fundamental Units,” initiating a brief battle over the riot-control functions—a battle which the Carabineros finally won. After Pinochet lost the referendum on his continuity in power in 1988, the Carabineros definitely detached from Pinochet. By then the Carabineros had stopped the advance of the military and CNI over its jurisdiction and regained political initiative regarding policing policies, with new models and new planning capacities. The new alliance of managers and counterinsurgents dominated the force, with the former gaining more power with the approach of the democratic transition.

At the moment of transition in early 1990, the Carabineros counted on a renewed professional doctrine that integrated counter-terrorism and prevention of common crime. They faced the new political authorities with a coherent definition of their professional mission, with a cohesive command and a great capacity for political adaptation and combativeness. Before the transition, they reconverted most of their political capital into reinforcing their bureaucratic power and their authority over policing policies. The Investigative Police, which had remained a small weak force, completely penetrated since the beginning of dictatorship and with no autonomous authority over policing policies, remained under the control of the Army, with a Colonel directing it.

Figure 2.1 represents the relative positions of the agents involved in this policing field in terms of their authority over policies and priorities before the transition to democracy. The most powerful agents are concentrated in the upper-right quadrant, rich in political capital and bureaucratic coercion capital, with the executive branch sharing the dominant position with the Carabineros General Directorate. Both the armed forces and the Carabineros participated in the Legislative Commission, the legislative organ. The criminal courts retained very limited jurisdiction over police behavior, and remained passive in the face of the latter’s abusive practices; it is located in a subordinate position. The same holds true for the Investigative Police, which had become completely subordinate to the Army, with an army colonel directing it. As such, within the space of police forces, the Investigative Police was oriented fully toward policing intelligence, but remained subordinated to CNI. Within that same space, the Carabineros had progressively evolved toward routinized law enforcement, which included repression of the common criminal, but still retained a constant control over the deployment of policing to repress political dissidents and detain and control the activated inhabitants of shantytowns. In poor neighborhoods the police intervened to fights “petty crime, terrorism and revolt” (Carabineros 1986a; Carabineros 1986b), mixing legal, political and managerial categories in their deployment.

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47 The Carabineros won this battle as the use of mortal bullets and acid by the army riot control patrols led to public outrage forcing the army to retreat from riot control issues. Since then the Carabineros monopolized and managed this crucial political tool. The police also prevented attempts of army officers to head the police and prevented the army from providing security to important visitors to Chile, such as US senator Kennedy, and the Pope (Cavallo, Salazar, and Sepulveda 2008:554).
Figure 2-2 Policing field in Chile, 1988
2.3.2. The new field and the paths to police change: Self reform in Carabineros and political colonization of the Investigative Police

Having established the objective relations between political agents and the police, the relations in the space of police forces (and the internal fractions of the autonomous Carabineros), I tackle in this second part the emergence of reform demands after the retreat of the military from the political field and the penal sector of the bureaucratic field, accounting for the contents for reforms and their eventual impact on bureaucratic change. I first analyze how the relations between the police and politics became structured as a result of pacts among political elites in the Chilean transition from dictatorship to democracy, and the different concrete strategies of political agents in relation to the autonomous Carabineros and heteronomous small investigative police. The transitions to democracy implied a mutation in the field of power where military power got devalued, both as a political capital as a legitimate bureaucratic source of authority over other bureaucratic sectors, including the police. This sudden devaluation of the military capital also affected bureaucratic police statist capital and opened an opportunity for the proliferation of new experts agents (individuals or collective), who reconverted their international contacts, legal and economic professional credentials to carve out a position in the policing field in the name of “democratizing” the police. These new experts introduced new discourses that defined the police mission and practices in new ways, which eventually led, in combination with the increase in the advance of the central government over the policing forces, to the initiation of self-reform in the Carabineros and of top-down reform of the Investigative Police by the executive branch since the mid-1990s.

2.3.2.1. Conditioned transition, political investments and new agents

The first president, Patricio Aylwin, from the PDC and part of the Concertacion continued the neo-liberal economic model implemented by Pinochet, including privatized social security, health, education and de-regulated labor relations (Vergara 1994). During his administration, he had to maneuver through a transition from a highly personalistic authoritarian military regime to a protected democracy with a number of authoritarian enclaves established by the 1980s Constitution, that allowed the police and military elites in government to institutionalize their power within the political arena. Among those authoritarian enclaves regulated by the constitution were the Carabineros, with a tremendous bureaucratic autonomy reinforced through a number of clauses in the 1980s constitution, and a solid and professionalized bureaucracy.

The 1980s constitution, following counterinsurgency and neoliberal doctrines, adopted an “anti-communist” and “anti-demagogic program,” that declared the armed forces and the Carabineros to be “wardens of institutionality,” obeying “the institutional order” and not the president (Allamand 1999:173). The 1980 constitution also created a National Security Council (NSC), composed of members of the military and the Carabineros and a minority of allied civilians. After the 1988 plebiscite denied Pinochet
the right to stay in power until 1997, Pinochet and Concertación negotiated more power for civilians within the NSC, opting to reduce the number of “appointed senators” within the senate, reducing corporatist power and expanding electorally based political power in the political field. In the face of this relative loss of political power, the “hard liners” who were still in power, invested in increasing the “corporative autonomy” and bureaucratic strength of the Armed forces and, by extension of the Carabineros (Garreton 1993). With the clear aim of securing the bureaucratic power of the Carabineros, four days before President Alwyn’s inauguration, the governing Junta passed Act 18,961, a new General Police “Constitutional Ordinance.” The act maintained the police within the Defense Ministry and under the jurisdiction of military courts. It also gave the police chief the monopoly over designations of high officers, incorporation, careers, and social benefits, and very importantly, mandated that police budgets could not be smaller than that of 1989.

Under these conditions, by Aylwn’s inauguration the “bedrock of the government’s strategy had to be institutional and constitutional reforms that would empower the government to govern” (Garreton 1994:223). The most important ones were “1) eliminating the institutional remnants of authoritarianism (such as…the organic laws of the Armed Forces and the Carabineros, 2) neutralizing non-democratic [leftist terrorists] actors, and 3) resolving the human rights problem inherited from the military regime” (Garreton 1994.221)

The elected government, lacking effective control over the police, had failed attempts to relocate the police to the Interior Ministry in 1991 (Frughling 1998:102), and engaged then in triple strategy of political investment to alter the balance of power inherited from the dictatorship era. To control radical groups but also the intelligence task-groups from the armed forces and to reinforce its position vis-à-vis the Carabineros, the government: i) created a political intelligence office; ii) reinforced the historically subordinated Investigative Police and iii) sponsored allied intellectuals and think tanks.

### 2.3.2.2. Creating the democratic police heterodoxy through international strategies

A first group of new agents that became active in proposing and fighting over policing policies were academics, working in the state, fighting radicalized leftist groups, and keeping the Army out of internal security during the first three years of democracy. The center-left coalition had to deal with the return of radicalized rightist groups in 1991.49 To disarticulate the radicalized left the government created—recruiting former members of leftist armed organizations and new young professionals—an informal but very effective anti-terrorist Council for Public Security, known as “The office” (Correa et al. 2001:343). The office produced political intelligence on radicalized groups and other intelligence services. Gradually the office started to deal with organized crime connected with terrorism, in particular kidnappings and eventually common crime. In 1993 the Office acquired legal status as the Public Security and Information Directorate (DISPI).

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49 Failure to do it could give arguments to the army and the police to regain political power, and, according to Hugo Fruhling, who became an expert in democratic counter-terrorism “Pinochet was going to pressure authorities to get internal security back in the hands of the army” (Interview, June 2009).

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preeminence of the executive over the congress, and weakened its representativeness through appointed senators. Former Carabineros Directors would become senators.
In parallel to creating DISPI the government reinforced the Investigative Police, increasing its budget and personnel, using it to police and disarm the radicalized left.\(^5\) To do so the government penetrated the Investigative Police very easily, changing its authorities and orienting it, first toward political intelligence and then toward criminal investigations beginning in 1991.

Between 1992 and 1994 agents from DISPI, trained in intelligence abroad, also started to develop a number of memos and papers that questioned the doxa of national and state security within the policing field. Within DISPI, Patricio Tudela, a social anthropologist, with a PhD from Bonn University, and who had worked on political analysis of the 1989 elections, became an expert in police issues as an intellectual working for the government. He was trained in intelligence analysis in Germany, but increasingly, as the terrorist issue became secondary, he introduced into Chile the German “democratic security” doctrine that put legality, human rights and citizens accountability at the center of policing criteria (Tudela 1995, 1998). He imported and adapted the police doctrine of German Federal Office for Protection of the Constitution. Very soon he became director of the Division of Police Coordination and an advisor to the interior ministry.

By the same time that the democratic government began combating internal terrorism through DISPI, Secretary General Minister Edgardo Boenning—former director of the Center for Development Studies (CED), “the most active and broadly effective institution working on the topic of [democratic] transition”(Puryear 1994:92)—began to reorient the think tank to deal with contemporary government concerns. Central among them was counter-terrorism. Within CED, Hugo Fruhling, who was also an advisor on human rights issues, was in charge of studying counter-terrorism by democratic governments. With such research and work experience, Fruhling started to reconvert his expertise in transition issues into expertise in policing issues.

In a short period of time, Fruhling became an authority on policing issues after an international career where he acquired foreign credentials and contacts that allowed him to participate in the local political arena as a specialist on human rights first, and then as a transition and counter-terrorism studies expert, and as a police reform specialist since the mid-1990s. A newcomer to the legal profession—he wanted to study politics—he pursued legal and socio-legal studies at Harvard Law School in the early 1970s with a Ford Foundation Fellowship, returning later to geting a doctoral degree in 1984. Meanwhile, in the late 1970s he participated in the church-sponsored human rights organization Vicaría de la Solidaridad and was a member of the Group of the 24—a group of legal intellectuals and politicians that discussed and opposed Pinochet’s 1980s constitution. In the mid-1980s he became an expert on democratic transitions and alternatives to the human rights question, working at the Academia de Humanismo Cristiano and CED. He was again at Harvard in 1990 to teach a seminary on transition and legal strategies for punishing dictatorship-era human rights violations. Just after the fall of the Berlin Wall he worked with Philip Heymann from the Harvard Law School, who was studying counter-terrorism by democratic regimes, as well as on judicial reform in Guatemala. By the time he was hired by Heymann he realized that “besides human rights, which was

\(^5\) The Investigative police budget increased 126% between 1990 and 1996, whereas that of the Carabineros increased on 86% in the same period (Frühring 1998: 98).
very important for the transition, at the same time, the issue of institutional reform of the armed forces, justice and the police was going to be very important after the transition” (interview Hugo Fruhling, May 30th, 2009). Back in Chile, he worked part-time in the Coordination Division at DISPI—in charge of collecting information from the police—and part-time at CED, and then went back to the Ford Foundation, now headed in Chile by his old friend and FLACSO colleague Augusto Varas and asked for and received a grant to work on police accountability at CED.

Reinvesting his credentials and connections now in the policing realm, after visiting the Woodrow Wilson Center and contacting the New York based Vera Institute, he was soon able to participate in a regional network of research centers and NGOs working on police accountability. In this same process of reconversion he introduced the new definitions, standards, and models for the police. At the same time he projected into the policing field the same political dispositions and tactics. He began producing a critique couched in human rights that was also internationally backed. He invested in the know-how and contacts local, in particular, creating research and diffusion centers producing reports, documentations, publication and conferences about specific aspects of the democratic state (and not about the regime in toto). In doing so it created a new position in the policing field, located at the intersection of the academy, politics and bureaucracy—that of the police reform expert.

But just as the governing center-left parties reoriented their think tanks to administrative matters, facilitating the reconversion strategies of its allied experts, political and media agents identified within the political right also reconverted their media power, political contacts and economic power into capital of authority within the policing realm, through creating their own think tanks: Fundación Paz Ciudadana (FPC) and Libertad y Desarrollo (L&D). In 1992, media tycoon Agustín Edwards created FPC just after his son was released after months of kidnapping by radical left groups. The think tank was led by economists trained at the University de Chile Economics Department and by propaganda experts and financially backed by the main economic conglomerates of Chile (Ramos and Guzman de Luigi 2000). FPC put crime at the center of the political agenda right after transition (Ramos and Guzman de Luigi 2000:71,74). L&D—created in 1989 to advise the right-wing Independent Democratic Union (UDI) party—fed the crime control policies of Joaquín Lavín, himself a Chicago-trained economist and a major of the northeast Santiago wealthy Las Condes municipality since 1992.

Both think tanks combined academic authority, with economic power and the power of the media. During their initial years, they advanced very rapidly into the policing field, propelled by the expansive dispositions of the Chicago-trained economists who pushed to extend their know-how into new jurisdictions (Fourcade 2009:9). FPC proposed specific anticrime policies inspired by American models that Edwards had learned in the US where he resided in the early 1970s from his close contacts and friends from the US Republican Party—among them David Rockefeller, brother of former-Governor Nelson Rockefeller, famous for his anti-drug policies in New York in the early 70s. Edwards himself “does not trust the Carabineros or the criminal justice system” (Ramos and Guzman de Luigi 2000:68), and advocated for their transformation. Following the US models, FPC first promoted municipal police forces and community participation. Later on, as we will see in the next chapters, it promoted a more efficient
criminal procedure with a more powerful prosecutor office, private prisons, and an extended parole service.

Finally, besides DISPI, CED and FPC, a group of legal scholars at the Universidad Diego Portales Law School who came from human rights organizations and who had a long trajectory in the legal academy reinvested their human rights and legal know-how into developing doctrines of internal security and the police. Juan Bustos Ramirez headed the group. He was a former criminal law professor at Universidad de Chile, expelled by Pinochet and exiled in Argentina, Perú and then Spain during the dictatorship (Bergalli 2008). Another member was Jorge Mera Figueroa, Busto’s disciple, who in the late 1980s worked at the Academy of Christian Humanism—a Catholic Church institution that sheltered academics and researchers during the dictatorship (Puryear 1994). By 1992 the Portales group began producing empirically based critiques of the police and envisioned an alternative general orientation of the criminal justice system, including the police, based on human rights and a liberal penal doctrine. The critique also revealed the presence of critical criminology introduced by criminologist Maria Angélica Jimenez (Jimenez 1993), who had been trained in Venezuela. The new humans-rights-based legal doctrine introduced into the field the notion of “citizen security.” This notion developed during the Spanish transition to democracy, in particular during the Constitutional reform and subsequent legislative debate (Bustos 1983; Dominguez-Berrueta, Fernandez de Gatta, and Pablo 1986; Recasens i Brunet 1989:623–633). Added to it were the co-production of security (“the collaboration of particulars in their own protection”) and focalization (“the replacement of repression of popular and juvenile groups, by prioritizing, hierarchizing and establishing rational criteria that allow an optimal use of the existing resources” (Mera Figueroa 1993b).

From the convergent activist and professional trajectories and reconversions of these new agents and their doctrines, a new heterodoxy started to take shape within the field. The new reformist heterodoxy centered on the use of the police to provide security to citizens—and not just the state as the ultimate goal of the police. The new foreign notions of “citizen security,” (Spain) “security in democracy” (Germany), and “law enforcement” and “legal and public accountability” (US) were merged within an alternative discourse that favored political accountability, bureaucratic efficiency and community participation.

The conversion of capitals and know-how invested in fighting or transitioning from the military, to capitals of recognition within the policing arena included the introduction of new concrete policing models that had affinities with the new target of citizens’ safety. Central among them were community-policing models, problem-oriented policing, and new public management schemes. The reconversion strategies of the Chilean reformers in the early 1990s coincided with a new era of US foreign police policy, promoting these policing models.

After 1990 U.S. government put into place a new foreign policy meant to reinforce the criminal justice system in post-communist and post-authoritarian countries

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51 He worked on human rights and security during the dictatorship with human rights scholar Felipe Gonzalez, from the Chilean Commission on Human Rights, and with a then young Juan Enrique Vargas on state repression (Mera Figueroa, Gonzalez, and Vargas 1987), and then on democratic counter-terrorism (Mera Figueroa, Gonzalez, and Vargas 1991).
so as to exclude the military, protect democracy and secure foreign investments (USGAO 1992). By 1993 President Clinton implemented a new assistance program designed both to secure technical aspects and outcomes, such as extraditions, but also to strengthen democratic regimes by promoting “effective and accountable police forces” (National Institute of Justice 1994:8) State and non-state actors participated in this new foreign police policy network “democratizing police abroad” (Bayley 2001). Among the participants in the 1995 National Institute of Justice conference on “Policing in Emerging Democracies” was Harvard Law Professor Philip Heymann, who in 1994 had become an expert in criminal justice reform with experience in Colombia, South Africa and Russia, and who introduced Fruhling to the business of reform. We also find Hermann Goldstein, U.S. police reformer-turned-scholar and police intellectual invited by the Chilean government to advise them on police reform programs in 1995 (Goldstein 2008). He specialized in NGOs such as the Vera Institute—which expanded its programs internationally, “including long terms engagements with the national government of… Chile”. This network in the north benefited the international strategies of the agents in the south. In 1995 Hugo Fruhling visited the Woodrow Wilson Center and became part of a Vera Institute program on police accountability. After his stay he “brought with him to Chile community policing, which is a way of improving the relations between the police and the community” (Interview, July 2009).32 Studying and importing these models were not passive exercises of imitation but were meant to introduce within the field the new standards for policing for which the new agents would become judges and authorities.

Five years after the transition, the policing field in Chile had become partially restructured (see Figure 2.2) as a result of the central government strategies (creating DISPI) and the reconversion strategies of legal scholars, human rights activists and economists and right wing-parties. It is within this modified space, pregnant with new proposals and visions about the police, that the Carabineros and the central government re-engaged in an active struggle over policing policies in early 1994, when recently elected President Frei asked police chief Stange to resign. The struggles between the central and local governments and the Carabineros soon caused the Carabineros to turn to this new heterodoxy into a new bureaucratic reality.

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52 The community police model, elaborated by local police forces in the U.S. to deal with riot and new race relations issues since the 1950s (Walker, 1980) was diffused nationally in the US by federal commissions since the 1960s and 1970s, and by the early 1990s is available as a formalized models to be diffused through exchanges among police forces, the federal government or NGOs who started to become specialized in criminal justice reforms such as the Vera Institute and then participated in new US foreign police policy that got established after 1990.
In the mid-1990s the policing field was now populated by new and older agents and institutions. The new agents, were, the experts from the government sponsored think tanks and working in the government. The new institution was DISPI that besides dealing with intelligence gathering fighting the radical left, it had began collecting information on common crime and monitoring the police. The right wing think tanks and their access to press were a novelty in this space. Within the space of police forces the Investigative Police progressively got closer to the autonomous pole of the field, beginning to concentrate purely in criminal investigation after the had been mobilized to fight the radicalized left wing groups at the same time that it increased its budget and personnel. Within this space the criminal courts remained weak during the first decade of democracy.
2.3.2.3. Police reforms as defense from material and symbolic attacks of central and local governments

The change in the Carabineros following the reform demands in Chile resulted from a long battle between the central government and the police that lasted for about a decade, from 1994 to 2005. The Investigative Police changed, instead, because of the prompt subordination of the force to the central government directions. In the struggle between the Carabineros and the central government, the central government engaged in a double strategy of budgetary attrition and imposition of new definitions of the police mission, internal workings and relations with the public. In this process the central government, and in particular DISPI, advanced and circulated new missions definitions, managerial tools, administrative techniques, know-how on community relations and public accountability. The police, oriented both to bureaucratic preservation, but also concerned with public opinion and its public image, changed its organization and external relations incorporating these new categories and criteria. This struggle between the central government and Carabineros converged in its effects with that between the ascending managers and the retreating counterinsurgents within the Carabineros.

The material and symbolic struggle between the executive branch and the Carabineros began with the inauguration of the second democratically elected president, Eduardo Frei, also from the Christian Democratic Party (PDC). He needed, for political reasons, to increase its control over the police and had now the institutional capacity to do that. By 1993, the central government had judged and imprisoned members of radical organizations and terrorist groups and by 1994, crime and insecurity had become central problems within the political agenda. FPC had introduced the question of insecurity in the political agenda since the early nineties, transforming fear to terrorism and social insecurity into fear of street crime (Sunkel 1993) This politicization of crime, was combined with the progressive construction of security policies as an autonomous area of state policy. These processes in the political field found the government ready and willing to dispute the hegemony of the police over policing issues through DISPI and allied think-tanks. In this situation, the first strong move was, instead of asking Director-General Stange to stay, as President Aylwin had done, asking him to leave, even if he had the right to remain in his position for four more years by constitutional mandate.

In early 1994 a military prosecutor indicted General Stange in a case of the assassination of communist activists of 1985—the same case that produced the replacement of Director Mendoza Duran by Stange—accusing him of not collaborating with the judicial investigation. The government, exploiting the scandal, asked him to leave but he refused. As a response the central government asked him to “at least modernize the force” (Interview Tudela). A month later the president requested the

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53 Actually, crime and insecurity were becoming less important as a political problem by 1994. According to Luis Vial, the percentage of respondents to a public opinion polls conducted by CEP that considered crime as an urgent social problems that government must address went from 64% on April 1991 to 40% on December 1994.

police to “improve the levels of efficacy and efficiency” while it declared it would “protect the administrative and operational integrity of the Carabineros, and in particular, the members of the institution“(Presidential Message, May 1994:43).

To compel the police to “at least modernize,” the government froze designations of new personnel and promotions, just as Pinochet had done between 1977-1980 and 1985-1987. This changed the internal balance of power within the Carabineros, leading to the final displacement of the counterinsurgency experts and the final advancement of the managers to the control of the most important positions. Almost immediately the high command reorganized itself. General Fernando Cordero Rusque—a communications and logistics specialist—replaced Deputy-Chief Alfredo Nuñez Allende, an intelligence specialist, whereas the Superior Advisory Council (CAS) was put under the direct control the General Director (RC, April 1994). By mid-1994 this partially renovated CAS elaborated a first “Modernization Plan” (Carabineros 1994b) being careful to present it as an autonomous action, minimizing the influence of the government.

The plan was initially based on renovated “professional education, respect for human dignity, efficiency in production of security and incorporation of technology” (Sueiras Moore 1995), reflecting a mix of traditional elements and the presence of the managers in top positions. It incorporated new information technologies in police precincts and patrolling. But at the same time, it was highly traditional, with human dignity emphasizing the respect for the members of the public who get to police stations and for police officers, in an oblique reference to human rights. The new professional education meant originally re-affirming the traditional police principles and values.

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55 This “modernizing approach” toward the state that Frei espoused reflected the PDC tradition toward grand designs and state activism (Petras 1969:197), combined with the technocratic preference of President Frei. The modernization crusade advanced by Frei aimed at renovating public institutions to allow them to provide timely and quality public services, incorporating “new approaches from the private enterprise, such as process reengineering, benchmarking and outsourcing (Tudela 2011:13). Frei created in 1994 an Interministerial Committee for the modernization of public management using: “i) Target Oriented Management, ii) Greater efficiency, iii) technology and modern management schemes, iv) dignity and training of public, aiming to “increase efficacy, promote leaders within the public administration, incorporate new technologies, pass toward a target oriented management, concentrate on users, and guide management by a principle of transparency. Officers”(Tudela 2013:13). The modernization crusade advanced by Frei aimed at renovating public institutions to allow them to provide timely and quality public services, incorporating “new approaches from the private enterprise, such as process reengineering, benchmarking and outsourcing (Tudela 2011:13).

56 On April 1995 Stange declares that he “has worked in trying the interpret the expectations of the president regarding modernization,” but being very careful to define modernization “not as erasing or eliminating everything old, on the contrary, giving new shape to things of permanent value and proven usefulness, expanding them through technical advancements in accordance to the country’s development” (Stange Oelckers 1995)

57 During 1994 the Carabineros started developing an automatization and computerization plan which will allow reducing administrative work and increase officers on the street as well as reorganize patrolling schemes (Carabineros 1995) The Carabineros´ emphasis on logistics and resources appears also in Frughling (1998:100-101).

58 See. “Vocación” and “La etica professional en Carabineros de Chile” (RC, November 1994); “Mensaje del General Directo” and Mártires del Deber” (RC, Dicembre 1994); “Doctrine Index,” (February-January 1995); “Nuestro Espíritu de Cuerpo” (April 1995).
including increasing the studies on doctrine published in house organs to assure cohesion among the ranks against what was seen as an attack by civilians. 59

The government responded that it found the modernization plan “insufficient,” Tudela himself discussed the plan (Interview Patricio Tudela, June 4th, 2009) and in late 1994, escalated the symbolic attack criticizing the Carabineros’ approach with an international conference in Santiago on “Security, Democracy and Participation.” DISPI director and Hugo Frughling from CED were keynote speakers (DISPI 1995). Interior Minister Carlos Figueroa, declared in his speech written by Tudela on “Citizen security as a state task,” that “the old paradigm of public order, whose instrumental character allowed it to serve the interest of authorities gives place to that of citizens’ security, […] centered in protecting citizens” (DISPI 1995:8). DISPI Director, emphasized the need to balance the rule of law and repression, to aim toward greater efficiency and efficacy, to incorporate the community and municipalities in the production of security, as well as focalization of their efforts. Hugo Frughling, from CED and DISPI, added to all this the need for more administrative and judicial control, program evaluation and greater community participation (Fruhling 1995:225).

After standing two years of political pressure, Director Stange retired on October 1995 and become appointed Senator. By then the freezing of careers had made the CAS and the high command agree that “the continuation of Stange in front of the institution started to become too heavy of a burden to the whole force… Stange decided to resign for the good of the institution, let’s put it that way” (Interview Retired General Sandoval Quappe, June 2009). Deputy Chief Cordero Rusque, from the managers group, got promoted to General Director in 1995. With a strong corporative outlook along with a keen managerial profile he continued the organizational reform but extended it to other realms. In his first discourse, Chief Cordero declared four core objectives for his mandate which follow very closely the dictates of new public management: “elevate functional efficiency and efficacy, rationalize operative and administrative procedures, perfects its public image and improve the exchanges with social actors” putting “human resources as the basis of these efforts” (RC, October 1995). 60

Within one year the Carabineros produced a new “Strategic Plan.” The plan encompassed “four modernizations[:]…human resources, logistics, communications, and operations” (Interview, General Gonzalez Theodor, Planning and Development Director, May 2009). Human resources were tackled from two perspectives, the “professionalization of human resources” (Carabineros de Chile 1996), in terms of

59 The Police Doctrine is defined as “the norms ad principles believed, accepted and thought, that translate in feeling, thinking and action of every Carabineros officer, transmitting a seal of continuity and uniformity in proceeding so as to better achieve institutional objectives.” The general principles include respecting the constitution, acting according to law, professional capacity, solid discipline, and prevention. The Specific Doctrine Principles included: “protection of rights, exclusion of torture, impartiality, operative preeminence, moderation and discipline, constant education, transparency and simplicity of command,. The values are those of loyalty, veracity, integrity, discretion, responsibility, obedience, honor, dignity, honesty, braveness, sincerity, self-control, generosity, austerity, prudence, courteousness” (Rosales Gimenez 2000). 60 Chief Cordero Rusque on April 1st 1997, declared before the president, Interior Ministry, and the Finance Minister, its total identification with the government policy, sustaining that “police modernization” is based on “public management interested in results, transparency and a quality public service” (Cordero Rusque 1995).
“rigorous selection, technical formation, and specialization”, along with acquisition and preservation of vocational values.\footnote{The technical qualification were oriented to specialization and adequate performance in relation to its specialty and role, “in order to provide a quality police service” (Carabineros 1996) In logistics implied the introduction of better financial control and monitoring performance of supplies, and in communications the new information technologies to improve internal communication and public relations campaign (Carabineros 2005:181). The concern with public relations dated from the 1960s, but was now reincorporated and continued with the aim of improving the “corporative image” of the Carabineros.}

In 1997 General Director Cordero Rusque left to become “institutional senator” and Deputy-Chief Manuel Ugarte Soto becomes chief. Ugarte Soto and his Deputy Chief General Lagos came from the Personnel Directorate and had rare academic credentials.\footnote{Ugarte Soto had participated in 1995 Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Cairo, with Luciano Follioux and Patricio Tudela, and had developed a working relationship with them. His Deputy Chief, General Lagos, was one of the first officers to have an engineer degree granted by Carabineros back in 1988 (Interview Colonel Quijada, May 10, 2009).}

The careers of both Ugarte Soto and Lagos reflected the progressive ascendency of experts in management and engineering within the force, displacing intelligence experts. From the commanding heights the managers started to give a new shape to the organization. One of the main strategists of the modernization plan, Inspector General Eduardo Vera—who held an MBA from the Economics School at the Catholic University—described these “modernizations” as “corporation’s strategy, not of differentiation by price, but of differentiation by service, where, even if you have the monopoly, you must differentiate from others for the quality of your services” (Interview, Inspector General Vera, April 2009).

For 1997 the president promised “more resources” (Presidential Message 1997) but conditioned the provision of those resources to the elaboration of a rational plan, that showed the appropriate allocation of those resources, otherwise the budgetary petitions would not be approved. According to Tudela, it was not “just a matter of asking for this or that only because they think this or that is what they need” (Interview, Patricio Tudela, July 6\textsuperscript{th} 2009). This time the government was using the budget rules put in place by the Chicago economists in 1979 to put pressure on the police. In 1998 the police responded to DISPI developing a whole series of studies to justify their petitions for new resources and their efficient use. Back in 1995 the police had started again training officers in the Inter-American Course on Project Preparation and Evaluation (CIAPEP), at the Latin American Institute for Planning and Evaluation, from the Economics Department at the Universidad Católica, led by Chicago economist Ernesto Fontaine. At CIAPEP they produced studies on police computarization, crime statistics, and mobile data terminals. In 1998, with these studies in hand, the commanding managers expanded project evaluation know-how from logistics to operations; from the offices to the streets.

Through studies “based and originated in the economic and administrative sciences” the Planning Directorate—the managers’ stronghold—the managers created methodologies and formulas to determine the local and aggregated demand of police services. For that they produced in 1998 a “Methodology to determine the critical surveillance level of a police beat” (Carabineros 2000:22–44). According to this methodology the “security demands” of each beat are determined by taking into account common crimes rates in the zone, number of judicial orders served, as well as data on public insecurity and drug consumption. Comparing the demands with the “units of
security offered” at the local level, the deficit is established. Adding the “security deficit” of each quadrant the police they calculated the “national security deficit.” By developing this methodology the Carabineros provided itself, according to their own words, with the “a scientific way to establish the need of additional resources that the institution demands to efficiently perform its labor” (Carabineros 2000:9).  

As a result of these studies the Carabineros provided itself with symbolic means to counter the budgetary attrition in the hands of the Finance Minister, controlled by the government. According to the official chronic released in 2000, “the different actions taken within the realm of security can be interpreted from the perspective of authentic investment projects…this is the great innovation and modernization we have introduced in the Carabineros…[now] investments that were seen before from the perspective of the mandatory provision of services, can now be justified before politicians and civilians in terms of the social and economic benefits it can procure” (Carabineros de Chile 2000: 8). The “Finance Minister suddenly found that it was facing a technically capable institution,” asserted Tudela, working at DISPI (Interview July 6th, 2009).

But the managers did not limit themselves to window dressing their use of resources. They extended the logic of management from the administrative to the operative realm. In 1998 the High Command launched a pilot version of a new deployment plan, projecting the managerial and cost-benefit analysis to street work. In the pilot “Beat Plan for Citizen’s Security” (Plan Cuadrante de Seguridad Ciudadana) the new formulas and indexes were turned into the criteria for deciding on territorial deployment throughout the country. This was done ranking all municipalities according to standardized measures of “security deficits” (first focalization) and introducing targeting within each beat (second focalization). In 2000 the Plan Cuadrante was launched, providing those municipalities with the greatest “security deficits,” enough staff and resources to get to zero deficits on security supply. The Beat Plan was extended to the whole Santiago Metropolitan region in 2000 and later on to the whole country.

In 2003, and based on these “methodologies” the police gave the government a study that established a 10,541 officer’s deficit in personnel aiming to reach the “required” 41,000 in 2011. Over-performing their own goals, police personnel increased from 30,341 in 1989, to 36,759 in 1999 and 42,747 in 2008.

But the police “modernized” not only in relation to the constant pressure, critiques and ideological imposition of the central government and the ascending trajectory of the managers. The “modernization” plans were also a position-taking vis-à-vis the new discourses and action of human right and think tanks experts and major, that

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63 To establish the most efficient way to satisfy such demand the police resorted to the 1981 studies on the “Methodology to determine the equivalence among means of police surveillance” creating “surveillance units.” Based on those studies produced in 1981, where the surveillance units were invented, the police developed in the 1990s new studies to determine the comparative security value of different surveillance “factors”: a police station, an officer on foot, an officer on a horse, a motorcycle, a van full of officers. Each “factor” produces a certain number of “equivalent surveillance units.” Based on the methodology to determine critical surveillance levels and the equivalence among different surveillance factors the police then developed a “Methodology for the optimization of the operative deployment of the Carabineros” (Carabineros 2000:53,123) to decide on different alternative combinations of surveillance resources that were less costly.

64 In 2008 the Plan Cuadrante was in place within 88 of 346 municipalities, and by 2009 in 100 municipalities covering 77.8% of the Chilean urban population (Tudela 2009:20).
proposed transferring responsibility to the community for security. Community policing acquired two meanings in the policy circles of Chile. One advanced by the experts and think-tanks close to government, in particular Hugo Fruhling, where community policing was a mechanism of permanent consultation with the community and a way to mobilize the community being oriented toward security problems, and was imported to Chile as a means to increase accountability. The other meaning of community policing—espoused by the right-wing think tanks—aimed to justify decentralization, putting the police in the hands of municipalities.

Regarding the vision of community policing as a model that increases accountability, the Carabineros incorporated some aspects of it but left others aside. Within the Beat Plan the Carabineros incorporated “police-community relations” to “adequately address security demands, better identify community problems, and create more trust on the Carabineros” (Carabineros 1994a:11, 2005:105). Here the integration of community organizations was defined in managerial terms as a “strategic alliance […] to occupy the natural spaces of collaboration between the Carabineros and the community” (2005: 182). The Carabineros initially left aside the permanent consultation with neighbors and accounting for their actions and plans in each beat. Within each beat area especially trained officers were put in charge of obtaining information and receiving suggestions. But these practices were designated not as “community policing,” but as “police-community relations.” Through the notion of “police-community relations” the Carabineros distinguished themselves from the government expert, but satisfied the view that the government deemed as legitimate, at the same time that it could participated in the anti-crime programs the government has launched since 1998.

The pressure of the executive branch also continued operating favoring accountability practices change. The Carabineros started providing accounts for their actions and performance only in 2001 after the press run a story that the Carabineros and the Investigative police had committed serious mistakes in investigating the disappearances of young women in the northern city of Iquique. DISPI personnel exploited the scandal and asked the president to include among the “Twenty measures to improve justice and citizens security” a section on “Police Management, performance indicators and personnel evaluation.” The Carabineros, enormously concerned about their image, responded establishing management indicators in relation to their crime control strategies and relations to the community; established prevention goals and criminality control, and since then “every three months they will produce assessments and public accounts before municipalities” (Tudela, 2011:15).

**Detaining Bratton’s zero tolerance at the border:** Deploying this new national police prevention plans, framed in managerial and focalization language, the Carabineros also neutralized the municipal governments that wanted to create their own police forces, and who resorted to the zero-tolerance slogan to justify the creation of municipal police forces. In the early and mid-1990s, municipalities and FPC and mayors from the right-wing municipalities created their own urban unarmed patrols. The Carabineros opposed the municipal forces first with legal criteria, pointing to the constitutional norms that grant a policing duopoly to the Carabineros and the Investigative Police. By determining that richer municipalities had a greater “supply of security” than poorer ones, the Carabineros argued municipal forces
violated “everybody's right to an equal provision of security services, independent of the wealth of the municipal government, which reflect the wealth of its inhabitants” (Interview General Eduardo Vera, April 2009). In this way Carabineos both neutralized the municipalities to establish police forces, at the same time that captured the municipal resources available. It is within this context of competition between the police and the municipalities that the attempts to introduce “zero tolerance” policing by the municipal mayors was rejected in Chile, both the the Carabineros, the central government and experts close to government.

Zero-Tolerance policing, which William Bratton, from the New York City Police Department and later on, the Manhattan Institute, promoted in the Chile in the late 1990s consisted in a policing strategy centered in increasing the number of police officer, reengineering the force to specific goals, distributing down initiative and responsibility, giving more power to precinct commanders, deploying a problem oriented and intelligence-led policing, and increasing arrests on drug-trafficking and misdemeanors (See Bratton 2005). In 1997, Mayor Joaquin Lavin, from the wealthy Las Condes municipality, in the north-east sector of Santiago, contacted the Manhattan Institute and got advise from Carlos Medina, from the MI Latin American office, and from Bratton himself. Following his advice, he put in place an unarmed municipal force that would be oriented to cracking down on street vendors (Ramos and Guzman de Luigi 2000). The Carabineros objected the municipal police, as it was a direct competitor providing policing services. In 1997, the Carabineros police detained all members of the Las Condes guard patrol, for illegally carrying weapons. The homegrown version of “zero-tolerance” policing, the Beat Plan, had already been implemented in all municipalities of the country.

The introduction of zero- was also rejected by the government in late 1999 in the context of the presidential elections. The right-wing candidate Joaquin Lavin used the catchy slogan to position himself in the campaign. After Lavin lost the election in 1999 the government reacted by launching a crime-prevention plan with community participation called “Safe Neighborhoods-100% Commitment” (Plan Comuna Segura -Compromiso 100) (see Lucia Dammert and Lunecke 2004). Finally, experts who had imported community policing programs rejected the zero-tolerance modality it. Hugo Fruhling criticized it on the grounds that “it is debatable that zero-tolerance programs will control criminality, among other reasons, because it is already enforced here. A great number of detentions are already detentions for alcohol, vagrancy and loitering” (Hugo Fruhling 2001:29).

Finally, besides adopting managerial innovations, new deployment strategies, redefining themselves as providers of security services, the Carabineros also developed new criminal investigation capacities. These developments began in 1992 when the Carabineros created the Investigative Service, responding first to the expansion of the Investigative Police, and later on to the Criminal Procedure Reform of 2000. The police realized that they must produce investigations that satisfy new court standards. These developments led to the ascent of a group of officers who invested in criminal law and criminal investigations in the early 1990s. Among them, was Gustavo Gonzalez Jure who became police chief in 2011.
Table 2.5. Police personnel in Chile (1962-2010)

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<td>3000</td>
<td>3000</td>
<td>4900</td>
<td>5800</td>
<td>6600</td>
<td>7200</td>
<td>11096</td>
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Up until now I have focused on the changes in the Carabineros analyzing the intra-police struggles and the struggles between the Carabineros and the executive branch. The struggles between the central and municipal governments and the Carabineros coincided with the changes in the internal balance of power that put the managers and legal expert in the higher dominant positions. This new dominating groups changed the organizational mission, structure and practices in line with their capitals and interests, actively investing in organizational capacities. In the face of budgetary constraints and responding to the new norms and standards of legitimate bureaucratic practice, the Carabineros reformed itself to preserve its operative capacity, but more than anything its legitimacy and authority over policing issues. By changing its mission definition to providers of citizens security, modifying the training of officers turning them into “police managers,” creating new deployment strategies incorporating community-police relations in their patrolling programs, as well as engaging in periodic rituals of accountability the Carabineros retained the upper hand in policing policies, kept at bay central government officers and experts, and continued expanding its budget, its personnel and preserved its positive image intact in the eyes of the public.

This “modernization,” that took place between 1995 and 2005 is not a bounded-rationality adaptation of the organization to a problem of high crime, latter on ratified by the political preferences of the public as Garland (2001) would have it, nor a mere legitimation strategy by an irrational organization as organizational institutionalism (Meyer 1977) would suggest. It was a defensive strategy led by the new dominant groups within the Carabineros, the managers, to preserve control over the general direction of the force, in terms of professionalism, deployment decisions, internal administration, and the education of officers, responding to political agents’ attempt to intervene and direct the police. The ascending group of managers, that displaced the cold-war intelligence specialists, led this general defensive strategy. The new police leaders, through the same move, responded, at the symbolic level, to the new heterodoxy within the policing field, oriented toward citizen security, efficient management, and accountability, that new expert imposed in the first half of the 1990s. Finally, the coherence within the police high command as well as the planning capacities of the Carabineros permitted the managers to keep and then increase their institutional and expertise power-bases (the CAS, the studies at CIAPEP), while the internal solidity of the force allowed them to change the force from the top down. The reader should remember that all these changes took place during a period in which the executive branch could not legally removed the General Director of Carabineros who had a monopoly over designation, careers and operational policies.

My main hypothesis is that the success of reform depended on the autonomy of the bureaucracy from the executive branch, combined with the political style of the governing party. The change in this highly autonomous, internally homogeneous, and resistant police could not have taken place if political actors did not present a constant
and coherent policy toward changing the police. This coherence and continuity derived not only from the sustained consensus around combating crime within parties. It derived also from the structure of the governing party, the Christian Democratic Party (PDC) and from the cross-party consensus within the Chilean party system. Many elements favored this consistent, internal to the party, and others pertaining to the party system.

The PDC was first a highly institutionalized, platform-based party and with a strong influence of experts in orienting policies. It also had a tradition of investing in institutional reform from the 1960s, preserving the current institutions but also modifying them in line with new perspectives played out in long term plans. Inside the PDC of the 1990s there was an even greater presence of academics and experts orienting their long term planning. Party experts acquired greater weight within Chilean parties during the dictatorship, as academic discussion was the sole place where political discussion could take place. With time, as Puryear has shown in his study of the role of intellectuals in shaping the political culture of parties after transitions (Puryear 1994), when parties resumed political activities the academic style of reasoning, orientations toward consensus and empirically-based criticism became a core feature of PDC, and by extension of Concertación. Lawyers and economists were the most popular intellectual figures, but sociologists and political scientists also occupied high positions in the parties, and then in government. This “scholarly” modality of policy production was evident in Aylwin administration and became even more pronounced in Frei-Ruiz Tagle administration.

The PDC controlled the interior and defense sectors of the bureaucracy within the quota system shared with the Socialist Party and the Party for Democracy within the Concertación alliance. The initial development of expertise on security issues from the Aylwin administration continued with Frei, who relied in experts even more than Aylwin as he didn’t have a strong hold over the party. During the Frei administration the security and police experts, in particular those from DISPI shaped the policing policies in a coherent and sustained manner toward controlling the police and reshaping the force. These expert-based policies in turn, did not contradict the needs of the central government to engage in periodic public announcements of giving resources to the police, year after year, targeted to calm the opposition and satisfy the anxiety of the public. In sum, the government pressure reflected the reformist and “technocratic” nature of Concertación (Silva 1991), the consensual political struggle between Concertación and the right-wing parties, and the need of Concertación of investing in the police to fence of right-wing critiques about being too passive on crime.

The continuity of the governing party policy has also been essential to produce a coherent and deep reform in the heteronomous Investigative Police, which changed from a political policing force to one specialized in criminal investigation, organization crime, forensic investigations, and adopted the new managerial and accountability practices promoted by the government experts. The influence of government experts was so intense, that the Investigative Police, specialized in criminal investigation, incorporated even “community policing” programs and training in human rights since 1997 (Lunecke and Candina 2004). Just as the Carabineros, they also developed long-term modernization programs, which were developed by agents from DISPI, who migrated to the Investigated Police in the late 1990s. In conditions of low bureaucratic autonomy, as that Investigative Police, the coherence and continuity of the powerful central government became a
decisive cause of stable and effective change. The pressure of government, converged with the dominated position of the Investigative Police vis-à-vis the Carabineros within the space of police institutions, as well as their historically greater docility toward the central government. These three elements converged to produce reform in the Investigative Police between 1992 and 2005. When this continuity in political direction over an heteronomous bureaucracy is missing, what we get are easy initial reforms but also constant reversals. This is exactly what happened in the Argentine cases.

Before turning to the Argentine case it is important to mention that while the Carabineros changed, it maintained many institutional features that reflect the preservation of its dominant position in the policing field. Among others, its members are still tried under military courts (Galleguillos 2004) and preserved a harsh approach to repress political demonstrations and marginal populations, as I analyze in the closing chapter. Still the Carabineros has reduced its use of illegal violence over citizens since 1991 (Instituto de Derechos Humanos 2008:187–188). These relation between the police and the central government and between political groups were different in Argentina and so have been the struggles around reform and their impact on the police forces in democratic times. There, instead of an autonomous police forces as the Carabineros, we found historically heteronomous police forces with a historical trajectory of greater subordination to both politicians and the military. With such historical past the dictatorship and democratic years meant something very different to the Federal Police and the National Constabulary than what they meant to the Carabineros. To its very different long term and recent developments I turn now.

2.4. Argentine federal police forces: police instruments deployed in authoritarian and democratic political battles

Turning to the evolution of the Argentina Federal police forces, the greater Federal Police and the smaller National Constabulary, we observe that since their consolidation in the late 1930s and 1940s and up to the early 1980s, instead of professionalizing away from politics and acquiring bureaucratic autonomy from the military, as the Carabineros de Chile did, they remained practically subordinated to government, civilian or military, and bureaucratically subject to military control and ideology. The military acted in Argentina in between the 1930s and early 1980s as a political party based on its bureaucratic capacity. In the bureaucratic realm it advanced over the police jurisdiction imposing its definitions of the police function, eclipsing the orientations toward criminal investigation and local law enforcement of the Federal Police, and fully militarizing the National Constabulary as a national defense force. The subordination to the military did not allow the Federal Police or the National Constabulary, to acquire autonomous authority over policing policies, remaining instead continuously subordinated to the changing orientations of political agents. The greater direct subordination of the National Constabulary to the Army, kept it at a greater distance from political parties. Still the chronic objective and symbolic heteronomy of both police forces coexisted with a progressive deterioration of internal bureaucratic discipline and career-orientation, in particular in the Federal Police. Since the 1940s to the 1980s the Federal Police collective
public identity drifted from a theoretically organized doctrine focused on fighting inter-jurisdictional crime to a ritual reference to patriotism covering its illegalities and abuses.

In this analysis I refer primarily to the Federal Police and secondarily on the National Constabulary. I analyzed in greater detail the long term institutional evolution and institutional location of the Federal Police, because it has been historically in charge of urban policing in the capital city of Buenos Aires and political policing on a national scale, while the National Constabulary has been in charge of border patrolling. Objectively they do not appear to have competed for policing jurisdictions until very recently, with a division of labor where the National Constabulary was in charge on border patrol and the Federal Police monopolized urban policing. Even if after the 1970s, they began clashing over political policing, the National Constabulary does it completely subordinated to the Army. Still I the constabulary forces constituted an objective position in the federal policing field of Argentina, defined by the volume and share in the policing budget and in its changing institutional location. I deal with it with more detail in second moment of analysis, after the return of democracy, when I discuss the sudden expansion of the National Constabulary within the federal policing field (see table 2.6).

Table 2.6. Police forces budget share and personnel and army budget, Arg. (1965-2012)

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2.4.1. The Federal Police between 1945 to 1983: from a political to a military apparatus

The Argentina Federal Police was created in 1944 on the bases of the federal district police in the city of Buenos Aires put in place in 1880. Since the early 1900s it has specialized in urban crime and surveillance of politically “dangerous” groups, especially of immigrants, following the metropolitan London police model. With the political activation of the middle class, and the emergence of the Radical Party—especially in the late 1890s, and mid-1900s, the police was militarized (Kalmanowiecki 2000). After the triumph of the middle class Radical Party over the conservative parties in 1916, even if the new government removed active military men from the police, just as with Alessandri in Chile, the force was turned it into an instrument used against conservatives and
In 1930s, the military government of General Jose Uriburu, that removed the Radical Party from power, used it to repress political opponents (Kalmanowiecki 2000:202). In 1932, at the end of the dictatorship however, instead of being depoliticized, and set away from the army and politics, as the government and parties did with the Carabineros in Chile, the then Policía de la Capital was redeployed in political struggles and further militarized.

After Army General Justo—who participated in the 1930s coup—was elected president in 1932, he extended and perfected the intelligence sections of the Federal District Police to fight the Radical and Socialists parties’ followers, and to counter the power of the army. Nothing close to the liberal civilista reaction that took place with the fall of Ibañez occurred in Argentina. The continuity in power of political groups from the 1930-1931 dictatorship into democracy in 1932 prevented the separation of the federal police from its involvement in systematic political repression, continuous political penetration and bureaucratic subordination to the military. The nationalist and conservative administrations of General Justo (1932-1938), and President Castillo (1941-1943) prevented such break. Even if during this decade the police modernized its equipment, with new radios, patrol cars and weapon resources, to deal with organized criminal gangs (Caimari 2009), these capacities were used both to fight political opponents and control crime.

In 1943 another military faction, which included General Peron, took control of the government and created a Federal Police, a police force with nationwide jurisdiction over federal crimes and investigations, following US police doctrines (Fentanes 1979:2125). This force coexisted with the Federal District Police, until 1945 they were merged into the new Federal Police. President General Peron, in power since 1946, instilled a unitary but personalized control of all federal police forces. By then the federal government had three police forces, the Federal Police, he smaller National Constabulary which has been created in 1938 to secure borders in the northern territories of Argentina—and which follows very much the Carabineros model which Peron had observed in his stay in Chile in 1936—and the Naval Prefecture, created in mid-nineteenth century, and in charge of water border patrolling. General Peron controlled these forces designating loyal military delegates in the commanding positions. Instead of investing in legal training and legalizing their practices in dealing with citizens, as the Frente Popular did in Chile, he gave the Federal Police special legal privileges (Policía Federal Argentina 1952) and indoctrinated it converting it in a corporation within the peronist corporatist regime. He expanded political policing sections within it with members of the Army intelligence services in very high positions. In the end, a militarized state security model prevailed over the weak law enforcement model within

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65 An important exception to the continuity of political policing are the reforms initiated by the Radical Governor in the province of Cordoba, Amadeo Sabattini. He will not only modernize the police creating a judicial police, reform the criminal procedure code and apply a number of penal reforms which will have important effects in future development of the penal states of Argentina and Latin America as we will see in chapter 3.

66 In 1947, the director of Security, a famous torturer, becomes Deputy-Chief, and Lombilla, another famous torturer commanded the “Special Section” in charge of political policing. (Andersen 2002:149). After 1952 the political policing gets organized in a Technical Council, and with three special commands—Security, Political and Interior Commands.
the Federal Police, with a strong orientation toward the major tenets of Peron’s organic view of society and the state, and a strong identification with the political leader.

The military faction that removed Peron in 1955 tried to “de-politicize” the Federal Police (Policía Federal Argentina 1956:6), through purges and persecutions putting it in the hands of retired Navy officers. In 1958 the government passed a General Ordinance of the Federal Police, that reflecting the political subordinate position, did not reserve the upper echelons to career police officers, as the 1960 Chilean ordinance did for the Carabineros. During the democratic government of Frondizi (1958 to 1962), the government initially tried to separate the police from the military, turning the Federal Police into a specialist in law enforcement and urban policing (Vazquez 1962:111–147). At the same time, in 1961 and 1962, through the counterinsurgency Internal Commotion Plan (CONINTES) the army regained full operational control over the Federal Police. Late on, Retired Navy General Vazquez tried to combine the corporatist identity with a new professional role, re-orienting intelligence production to combat economic crime (Vazques, 1962:145). But these efforts to professionalize in the police ended when the military removed President Frondizi from power in 1962. In that year, the National Constabulary, which had until then remained in charge of border patrol, began to get regional headquarters, located across the national territory, and ready to be mobilized to repress protests in urban scenarios and mobilized in counterinsurgency operations in rural and urban counterinsurgency operations.

This subordination to the military of both the Federal Police and the National Constabulary got consolidated after 1966 when the military got back to power inaugurating the bureaucratic authoritarian regime commanded by General Ongania. Its technocratic bent—where the government “replaced party politics with management and administration in the state” (Cavarozzi 2006:38)—included the doctrine of national security, which integrated french and american counterinsurgency doctrines. Since 1966 Army intelligence specialists took control of the Federal Police. A former Army Chiefs of Staff Intelligence Director became chief of police and created a police high command, improved communications, reinforced the riot police, increased political policing capacities and put in place a national police council. Federal Police high-officers were sent to learn counterinsurgency techniques in the US (Muñoz 1984:31) and France, learning “all sorts of experiences among the veterans from Indochina and Algeria” (Paoletti 2006:252). But, while in Chile counterinsurgency know-how strengthened the Carabineros vis-à-vis the army between 1960 and 1973, in Argentina, the same doctrine

67 This insulation from politics is attempted by promoting a corporatist idea. On the metropolitan section he procures spiritual cohesion among the ranks, reinforces self-directing capacities with a Directors Council, and a Planning Department, and promotes a self-organization of the services making police officers participate in the designation of their chiefs, along with the opinion of a number of external agents, such as military and legal authorities. (Vazquez 1962:69).

68 He even tried to reinforce the social function of the police working with minors, juveniles, educational campaigns and even sports, as part of the expansion of “penal-welfarism” in those years, as we will see in chapter four.

69 The military even expands the Planning Division, turning it into a High Command, gives corporatist privileges to the members of the force, in the forms of more mutual aid service, a new housing program, a new hospital, and new buildings for the police and reinforces the corporatist identity by giving new buildings to the Police Circle, building a police museum and refurbishing the police pantheon. This new corporatist vision in also instilled via a new house organ, Mundo Policial (Rodrigues 1981).
increased the subordination of the Federal Police to the military. The second-tier of leadership within Federal Police leadership was in the hands of police counterinsurgency specialists, while the top positions were occupied by the military. Under the military government of General Lanusse (1970-1973), the subordination to the military and the use of the Federal Police to fight political battles increased. Now an army Division General (second in rank within the Army), and not a Brigade General (third in rank) became chief of the Federal police. In that decade the army itself got operational control over the police in fighting subversion (National Security Act 19,081).

Three decades after its creation in 1945 the Federal Police was internally divided in two grand sectors, the (subordinated) Metropolitan Directorate, in charge of law enforcement and urban order in the city of Buenos Aires, and an Interior Directorate, in charge of federal crimes and political policing in all the national territory. During the 1950s and 1960s the Metropolitan Directorate preserved its traditions of precinct police, with special detectives units, like the homicides brigade. In the 1970s, however, the distinctive outlooks and practices of Metropolitan and Interior Directorates became more blurred. In the 1970s counter-insurgency became generalized and applied to the metropolitan directorate and the interior police, turning urban patrolling units into “mobile gendarmeries” (Fentanes 1974:10).70

The Counterinsurgency model and doctrine was also fully applied to the National Constabulary, which was made part of the army. In early 1971, the National Constabulary receives a new organic law, which gave it federal judicial and security functions, as well as border patrol functions. Following the national security doctrine, the force was put under the Army Command, subject to military courts, and in charge of “intervene to restore public order and repress attempts to subvert public order, or in cases where police forces were surpassed or guerrilla warfare would arise” (chapter 3.J. Law 19,349 of January 1972).

With the coming to power of a civilian government in 1973, the civilian authorities continued deploying the Federal Police and the National Constabulary to fight political enemies. Within the Federal Police the intelligence and counterinsurgency police experts, with close connections with the Army command, preserved their dominant position, further subordinating the groups oriented toward judicial work and common crime prevention.71 Chief Alberto Villar—a counterinsurgency experts trained in France and member of a paramilitary unit “Argentine Anti-Communist Alliance” (Paoletti 2006) after being removed from the force, was reincorporated and became chief in 1975.72 However, as the Federal Police expand its counterinsurgency capacities it started clashing with the Army over counterinsurgency functions. Chief Villar was killed in 1975. With the new military coup in March 1976 the military penetrated the Federal Police as never

70 In that period, the National In the early 1970s the police and the military continue engaging torture but start disappearing political dissidents (Foro 1973).
71 Interior Minister Righi instructed the police to respect “the people” (el pueblo), and designated a police chief that promised that “from now on he would command with the criminal procedure code under his arm.” (Andersen, 2002: 105) A week later a bomb exploded in the Intelligence Police Superintendency and both the ministry and the police chief resigned.
72 Members of the Argentina Anticommunist Alliance, AAA (Paoletti 2006) got incorporated to the force in 1974 within the “Special Operations Department” (R.O., 10/29/1974). The Department was regulated two years latter (R.O. 16, 5/16/1976). Former membership in this paramilitary group was a powerful tool to ascend among the ranks and “obtain privileged and influential posts” (Peregrino Fernandez 1983:18)
before operationally and symbolically. The National Constabulary was already, for all practical and doctrine purposes, part of the army.

2.4.1.1. The Federal Police in the dictatorship: Further penetration and docile subordination

Between 1976 and 1983 Army Brigade Generals trained in counterinsurgency and intelligence commanded the Federal Police (Novaro and Palermo 2003:83). In contrast to what happened in Chile with the Carabineros, the military government in Argentina completely penetrated the force. At the same time, during the dictatorship, and also in contrast to what happened in Chile, internal centralized discipline got severely eroded, and corruption increased. Counterinsurgency doctrine, instead of leading to a new round of professionalization as in Chile, in Argentina it allowed and covered increased corruption and organizational decay.

Army personnel in charge of the force trained police officers in counterinsurgency and fully militarized the force between 1976 and 1983. In early 1976 the Army created and staffed a “Counter-subversion Police training Center (Reserved Order 11, 4/21/1976), produced specialized field-manuals and internal orders oriented to train police officers and the ranks, and made counterinsurgency a central part of the police curricula between 1977 and 1983 (See R.O. 3, 1/20/78; I.O. 30, 9/22/1978; I.O. 15, 1/21/1983).

To the traditional curricula for police officers, centered on legal matters and police procedures the military authorities added “counter infiltration, intelligence gathering, counterintelligence, and counter-subversive action.” Counter-insurgence methods were even extended to regulate arrests, detention and engagement with any armed citizen, extending to suspects of common crime the logic of war devised to deal with “extremist criminals” (Delincuente Extremista, or DE).

Counterinsurgency in the Federal Police was complemented not with a managerial logic, as in Chile, but with a religious perspective reflecting the greater power of catholic priests engaged in pastoral activity within the police and the armed forces. The Catholic church, controlled by conservative groups against Liberation Theology groups promoted

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73 In 1977, the police re-edited the 1972 intelligence field manual doctrine work “Subversion and International Norms vs. Counterrevolutionary power and Strategy,” written by Police Officer Raul Tomas Escobar (Escobar 1977). The work followed the French and North American counterinsurgency doctrine, and integrated geopolitics with counter subversive tactics, which included intelligence, urban combat, interrogation techniques, psychological operations and social action aimed at winning the will and respect of citizens. In the counterinsurgency logic, armed and security forces were waging a new type of “modern war” where oriented to win not the territories of a population occupies, but the “spirits and will of the population,” quoting Algerian civil war veteran French colonel Roger Trinquier (see Trinquier 1975).

74 Counterinsurgency was also used to foster internal discipline, ordering counterintelligence measures, and back-ground checks of political preferences, loyalty and affiliations, in any case of disciplinary disobedience. See R.O. 3/78. Since March 25th, all police personnel could be removed for “security reasons,” or for service reasons, with the aim “to have a concrete purifying effect in the administration.” (chap. 3, Act 21, 274)

75 In 1974, Chief Villar produce a detailed regulation of the ways of detecting and proceeding with alleged subversives, describing their methods of moving, disguising tactics, avoidance attitude, escaping, as well as the ways of searching their person, houses, and vehicles. (R.O. 10/11/74). On March 3rd, 1977 R.O. 10 regulated “cases of armed encounters that require deployment of significant forces,” and made it applicable to any “armed encounter with criminals, be them subversive or not”(my emphasis). By the beginning of 1978, police stations were put in charge of parole of political detainees (I.O. 20bis, 01/26/1978)

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an organic and essentialist view of society were police officers defended the “national being,” combining platonic ideas about a moral essence of the nation and biological metaphors of the national body (See Mundo Policial, Jan-Jun, 1977).

The combination of the new counter-insurgency mission with a religious-political crusade, took place in a context of expansion of illegalities and corruption. During the dictatorship the Federal Police run and participated in concentration camps, where illegal detainees were taken, interrogated, tortured and either legalized under the custody of the National Executive branch, freed with a warning, or killed, making their bodies disappear (Novaro and Palermo 2003:111,119). As legal controls were reduced to a minimum with the complicity of a passive, weak and conservative judiciary, besides persecuting political dissidents, many police officers engaged in highly profitable illegal activities, from selling stolen objects to extortion, and appropriating babies born in custody (Paoletti 2006:206), all the way to displacing common criminals from organized crime (Andersen 2002:263-266). The lack of internal discipline reached new depths, as the practical involvement in abuses altered formal hierarchies. In 1980, the military ordered the Federal Police to “return to the streets,” (I.O. 66, 3/26/1979). They did it, but not as the old traditional beat officer. Officers and subordinates were to exploit their positions engaging in corruption, and becoming so oriented to monetary gains that military officers got concerned that they would “end up having wage laborers instead of police officers” (Policía Federal Argentina 1983:26).

After four decades of existence the Federal Police, instead of becoming progressively bureaucratically rationalized (more complex and specialized, with stable careers and merit based promotions), acquired a copious and grandiose system of regulations, that was loosely enforced and continuously and constantly changed by highly volatile political actors that continuously penetrated the force orienting it in different directors and imposing their own political programs and priorities on the police. In these conditions the commanding police officers of the Federal Police, to wage their internal wars against internal competing groups, tended to invest in social and political contacts, rather than in institutional capacities. At the same time they became less interested in protecting police jurisdictions and careers based on merit. Many became more interested in exploiting the illegal benefits that their (unstable) positions could procure. Within the national constabulary, the loss of internal discipline, and the irregularity of careers and exposition to changing political orientation were less than in the Federal Police as the force was turned into a military unit, which isolated it from continuous political penetration.

Between the 1930 and 1980s and the moment of transition to democracy, the Federal Police in Argentina was organizationally and politically much weaker than the Carabineros de Chile. Differences are evident in the stability and composition of the police command. The average tenure of the eighteen police chiefs in Argentina between 1930 and 1974 was 20 months. Except for three, all the other Federal Police chiefs where army or navy officers. During the periods of electoral democracy between 1945 and 1976 the average tenure of Federal Police Chiefs was 17 months. The Carabineros, between 1927 and 1973 had fourteen directors, with an average of 38 months of tenure each, almost twice as much as in Argentina. If we only count chiefs during the democratic periods in Chile between 1932 to 1973 the average tenure increased to 49 months. In the Chilean police, the stable careers and independence from politics lead to a consensus
within the different police fractions, oriented to reciprocal respect and collective protection against the incursion of the army or political agents, preserving the bureaucratic jurisdiction acquired and allowing politicians to intervene less in careers and general policies.

Finally, the Carabineros obtained back in the 1960 a regulation that gave police officers a monopoly over commanding positions, and since the 1980s a constitutional regulation of the duopoly over policing functions. Federal Police officers never assured for themselves a monopoly over the commanding position of the force or a law that regulated their jurisdiction. They remained subordinated to the executive branch. The Federal Police elite officers, with a similar structure of specializations than the Chilean Carabineros, also could never develop a unified front against the constant interventions of political agents, including the military. Each internally dominating fraction was ultimately dependent on external political allies to remain in power within the force; making the leadership more volatile and incapable of engaging in long term institutional investments. Each of those fractions, unable or uninterested in protecting the jurisdiction of the Federal Police and merit based careers and access to the higher echelons, further heteronomized the force. These differences in autonomy explain their different reactions to the advance of the military in the last the dictatorship. While the Chilean police began using its political and bureaucratic power to counter the advance of the military, in Argentina, the Federal Police presented no coherent opposition to the advance of the military. While it preserved its levels of budgetary participation and increased salaries during the dictatorship, it loss jurisdictional power in the hands of smaller National Constabulary force and the Naval Prefecture, each of them subordinated to the Army and the Navy, respectively, within the bureaucratic field.  

If we are to represent the structure of the field at the end of dictatorship, the Federal Police occupies a dominated position vis-à-vis the central government. Both the Federal Police and the National Constabulary, are at a much greater distance from the dominant executive branch than the Carabineros are in relation to the executive branch at the beginning of democracy. The Federal Police, in turn occupies a dominating position in the space of police forces, with still greater budget and personnel participation than the National Constabulary. In turn all federal police organizations appear located toward the right side of the field, concerned with political order. The organizational boundaries of these police forces are in turn highly porous, constantly penetrated by politics and money.

As a result of its history of political interference and bureaucratic institutional weakness, the Federal Police and the National Constabulary became immediately subordinate to the political authorities that inherited the central government in democratic times and were subject to the different programs that reform experts proposed. The democratic era reforms towards greater legality in police practices, greater accountability, and even the adoption of community policing standards in the Federal Police will be easily introduced but also easily discontinued following the will of the dominant executive branch.

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76 Between 1976 and 1983 the Federal Police reduced its relative participation in the general budget from 1.4% to 1.1%, while the National Constabulary incremented its participation in the budget from 0.05 to 0.07. In the same period the armed forces, increase their share in about 50%, from 8.4 to 12.6. Regarding jurisdiction, in 1980 the Federal Police lost jurisdiction over the control over airports in the hands of the recently created Aeronautic Police, part of the Air Force.
Figure 2-4 Federal Policing Field Argentina, circa 1981

Formal law enforcement orientation  politico-economic concerns
2.4. The police evolution in democratic Argentina: organizational subordination to volatile politics and discontinuity of reform

If the dynamics of police reform in Chile in democratic times are about fights between the powerful and combative Carabineros elite and the central government in tandem with changes in the dominant groups within the Carabineros, and a top-down reform of the Investigative Police, the dynamics of initial reform and later reversal in Argentina respond to mainly to the impact of volatile politics over weak police forces, combined with destructive intra-police struggles in the Federal Police and new round of political instrumentalization of both the Federal Police and the National Constabulary. In Argentina organizational reforms were easy to start in these highly heteronomized police forces. At the same time, organizational changes remained highly vulnerable to political interference and, two decades after transition, they could only reach a weak institutional grasp. These reorientations reflected the power of the executive and the instability of the major political parties backing it. Organization weakness and police docility and political volatility was in turn combined with chronic economic vulnerability of the state in this period. In contrast to Chile, where the state has become a small but strong state, in Argentina in the early 1980s the state was unable to secure capital accumulation and taxation (Canitró 1994). During the dictatorship the state had become increasingly dependent on local or external holders of foreign currency, increasing the power of dominant economic agents and weakening the “political, bureaucratic and technical capacities of the state” (Sidicaro 2003:157–158). During democracy political and bureaucratic agents all remained exposed to changes in the economic field beyond their control. Still, it was not the economic crises which lead to the abandonment of reform by Menem in during the economically steady 1990s.

The Argentine policing field between 1983 and 2006 was more exposed to the changing orientations of political agents, prompting both the faster entrance and exit of reformers into the field, and a constant change in reform policies. Given these dynamics I divide the analysis in two rounds of reform and counter-reform processes. In the first part I analyze the reform policies of the first democratic president Raul Alfonsin and the proliferation of new agents in the policing field, and then show how they were reverted by the second democratic administration under Menem who subjected the Federal Police to its electoral needs, engaging in a veritable police populism, and re-deployed the national constabulary to repress protests against structural adjustment. I then refer to a second round of reform initiated by the 2000-2001 Radical Party administration of President de la Rua, and described how they were discontinued by the returning Peronist administrations after 2002, repeating the cycle of reform and counter-reform.

2.4.2.1. The policing field after the implosive transition: weak organizational changes toward legality and professionalism

The turn to democracy in Argentina resulted from the implosion of the military regime after the military were defeated in the Falkland Islands war in 1982. The weakened military bequeathed the government to a similarly weakened civilian opposition (Stepan 1985), divided between the Radical Civic Union (UCR) and the Peronist Partido Justicialista (PJ). The center UCR, had tried to reach the lower and
middle classes with a refoundational discourse, competed with a PJ that relied on its traditional bonds with workers’ unions. Elected president Raul Ricardo Alfonsin, from the UCR, inherited the highly heteronomized Federal Police and National Constabulary and adopted a strategy to change them based on the designating new personnel and reinforcing the institutional strength of those police forces fostering a new professionalism based on the respect of human rights and legality. This strategy followed his political project of reinforcing public institutions and his political need to counter the military.

Alfonsin, approached his term aiming to break with the past by reviving the republican potentialities of state institutions, reinforcing political pluralism and republicanism as well as investing in the rule of law (Novaro 2009:28). Alfonsin’s program reflected the influence of a team of legal advisors, the so called “Nino boys” or “the philosophers.” The “philosophers” were a group of legal experts trained in the philosophy of law in the UK and US, headed by Carlos Nino, working in the judicial strategy to punish the Junta members for crimes during the dictatorship (See Basombrio 2008). Excluded from academia during the dictatorship they reconverted their academic know-how into political capitals in Alfonsin’s administration (Dezalay and Garth 1998a:75–85) The philosophers proposed a general approach to reinforce state institutions where state organization should legitimate themselves by fostering and securing certain collective moral values (Basombrio 2008). In Nino’s view the state and the democratic regime more generally would legitimate itself according to the moral values that such regime would secure (Basombrio 2008). This emphasis in institutional reinforcement of the state coincided with a Alfonsin’s need to increase its political capital to fight the PJ and the military. Alfonsin’s political capital was based on his present control of the state and a weakly organized middle class electorate following. The PJ, by contrast had a political capital composed of elements that operated outside the formal politics: workers’ unions and incipient clientelistic networks.

President Alfonsin implemented this approach toward institutional strengthening and moral regeneration of the state in the policing realm. In his inaugural speech on 1983 before the House of Representatives he proposed “perfecting the modern police institutions” where “the expertise and incorruptibility” of all ranks “will preserve the daily life of Argentines, will give back to the police a meaningful role as the strong arm of the law and the trustworthy aid to justice, [police officer will become] educators of good citizens destined to contain the wrongdoers that take root amidst the great majority of citizens that fulfill their dues.” Rebuilding of the police required reviving its professional and democratic reserves and developing its organizational foundations for such consolidation.

This political project of institutional reinforcement centered in the rule of law was swiftly put in place. Less than a month after inauguration the government created a Judicial Police section within every police precinct of the Federal Police, and within it, it

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In Alfonsín’s view “[police a]uthoritarianism would give place to [a police] authority destined to prevent and eradicate crimes, [a police] morally and technically capable to act within the strict boundaries marked by the law that will transmit within it and to the outside a conception based in law, dialogue, persuasion and mutual understanding, an understanding that will exercise the respect of the supreme rights to life, honor, property, tranquility and the exercise of freedoms by citizens” (Presidential Message, December 1st, 1983:84).
elevated the Judicial Secretariat to the Superintendency level, and changed the curricula increasing the content on legal and constitutional issues. The docile Federal Police command promptly accepted this political re-orientation. The initial institutional reinforcement was continued by a number of more specific measures imposed by specific political needs: an orientation toward fighting common crime, controlling drug traffic and use, and dealing with juvenile and violent delinquency (I.O., 6.4.1985). Alfonsin also put the National Constabulary under the direct control of the Defense Ministry removing it not from the direct control of the Army Chiefs of Staff (Decree 2259 of August 1st 1984) and put it to work in controlling borders and drug traffic.

The central government left the Federal Police in charge of implementing these institutional policies, trusting the police itself would “now demonstrate their virtues and potentialities as an essentially republic institution” (Interior Ministry Speech, I.O. 3.11.84) The government put a police officer, Chief Di Vietri, to command the force. Left on its own the police chief and his command continued with their traditional pragmatic approaches. Common crime became salient in the press (Areas and Castellanos 1985) and following demands by the central government to deal with crime, the Federal Police command resorted to the traditional logic of prevention and repression based on “increasing the presence in the street…. and applying the misdemeanors code, increasing communications and collaboration among the forces (see “Communication of the Federal Police to the Police and Security Chiefs National Meeting, 1984)."
These plans of institutional reinforcement were done in conditions of severe economic crisis and budgetary limitation (Areas and Castellanos 1985), which limited its impact. In those first years the police suffered from personnel and resources deficits, and even a drastic retention crisis in the mid-1980s. In 1985 the government ordered a severe rationalization of resources (R.O. 7/12/1985) and Chief Di Vietri had to face subordinates striking for better salaries, to which he responded obtaining meager increases and insisting on their sense of sacrifice and loyalty (R.O. 5/9/1984). The budgetary crisis eroded any project of return to police professionalization based on specialization and merit based promotions. In this situation, promotions turned to be almost automatic in lieu of salary increases. In this period, small corruption started to expand dramatically both on the job corruption and in administrative corruption. Even the new institutional specializations in drug traffic control and auto-theft were affected by corruption. Besides the budgetary problems, and the expansion of irregularities and corruption, the police also had to deal with former members of task groups from the dictatorship who continued involved in organized crime and kidnapping. Chief Di Vietri resigned in 1985 after a political scandal, where the police could not solve the kidnapping of a rich businessman. Chief Miguel Angel Pirker replaced him in June 1986.

Chief Pirker came from the personnel Superintendency, and his designation gave temporary power to the fractions with careers in the central administration, temporarily subordinating the most conservative and dominated fractions specialized in counterinsurgency. To fight the corrupted counterinsurgency fractions, Pirker revived the government policy of making the police a close auxiliary to justice, focused on common and organized crime, while preserving the traditional prevention strategy of police presence but putting in place a centralized patrolling service that would “focalize” deployment “according to the functional necessities of the force” (I.O., 8.8.86). Internally he strengthened discipline, punishing the big and small corruption, violence and abuses –

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82 The participation of the Federal Police in the national budget, went from 1.6% in 1983 to 0.95 in 1985, only to have a slight recovery in 1988 (1.4%). Between 1985 and 1988 the police was unable to buy vehicles. Before transition the police acquired 800 vehicles, but only 2 in 1984, 120 in 1985 and 56 in 1986 (I.O. 7/11/87, “Estudio sobre la situacion de la flota automotor y reimplantacion del sistema de inspeccion). Those who stayed were underpaid and with overwork. 35% of the hours worked to cover common services came from overtime (I.O. Speech in Police Congress). During the first year of democracy 1800 members (7%) retired from the force because of low salaries (Areas and Castellanos 1985:6–11)

83 Officer Rinaldi, a young officer in the early 1980s remembers that in the early 1980s “the dream, the idea that you could live a middle-class family lifestyle, that you could live a decent life was gone, inflation was eating up our salaries, … we got paid every week not to lose that much, and most of us had two jobs” (Interview, June 2009).

84 A journalist specialized on police issues describes police officers as involved in “retaining part of the seized drugs to: a) sell or, b) planting it and extorting detainees; stealing auto-parts from cars under custody; selling information and photographs to the yellow press; protection rackets with prostitution; working in private police agencies against the law; dealing with criminals to seize the booty; inciting criminals to commit crimes under their protection; stealing objects during forced entries; [and] participation in agencies specialized in recovering stolen cars” (Ruiz Diaz, in Andersen 2002:309).

85 Pirker reorganized the Judicial Police Service (I.O. 7.7.86), including now protecting minors, the elderly, and the poor, re-instituting logic of police work that resembled the traditional role of the police as a social service. Many interviewees saw in Pirker’s perspective a desire to return to the policing of the 1950s of the police as a servant of society and in particular of the destitute. In a way, Pirker’s perspective resembled very much the police doctrines of the 1950s, espoused by the peronist government reaching out to the “people.”
police killings diminished 33% in Pirker’s first year (Babini 1990:14). Chief Pirker also followed the government policy of virtuous moral regeneration of the personnel, promoting the view of the police as “a public servant” and not a guardian of authority performing its duty: “as a friendly…credible…honest…[police force] the efficiency of which would justify its prestige…without receiving petty favors or participating in illegal businesses” (Babini 1990:17). Officer Salomon, who was beginning his career, remembers the period as one in which “the idea of service to the public, which meant that you had to serve citizens, replaced that of duty” (Interview with the author, July 2009). But besides these general changes Chief Pirker could not advance much. Military rebellions in 1987 promptly limited these efforts as the police intelligence services was put back to fight the rebellious military sectors (I.O., 3.3.1987), counterinsurgency skills were redeployed to “defend democracy and the constitutional order.”

The political situation allowed intelligence specialists to return to the commanding positions. When Pirker died in mid-1989, a political intelligence specialist, Officer Acosta, replaced him, with the “pro-law enforcement” groups becoming once more subordinated. By the late 1988 and 1989 the economy and the government experienced a severe crisis, with the police having to deal with civil disturbances and lootings. By then the state was bankrupt and the police resorted to private contributions to provide its personnel with uniforms creating a Police Foundation.

During Alfonsin’s administration the National Constabulary increased its budget, while that of the Army was reduced. President Alfonsin engaged in the same strategy of designating officers that had affinities with the central government programs of reviving the orientation toward public service and accountability and legality. The executive branch removed the top officers and ordered them to re-orient their mission toward the traditional role of border patrol, at the same time that it made them participate in drug trafficking control. The National Constabulary officers curricula was partially changed, introducing the study of human rights. For this police force the need to leave behind their military past, in particular during the first administration, led them to emphasize their orientation toward law enforcement, and present themselves as “soldiers of the law.”(Carlson 2004) In the military uprisings of the late 1980s, the National Constabulary declared itself on the side of civilian authorities (Andersen 202: 198).

2.4.2.2. The full turn to neoliberalism and the managerial path to police populism

During his decade in power from 1989 to 1999, president Menem discontinued Alfonsin’s program of reinforcing republican institutions, replacing it with his extreme pragmatism where he renounced to most of the Peronist platform that got him elected. As the dominant agent in the policing field his (re)orientations redefined the whole space. He abandoned the Alfonsin’s programs of making the police a professional law enforcement agency, used management experts to further weaken the Federal Police, and within it, sponsored political policing specialists and later on groups related to the metropolitan

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87 The intelligence training did not change much in those years. In the Annual Education Circular of 2/4/1984, the mid-level officers retraining dealt with “Strategic Intelligence,” covering “Political Economy, Counterintelligence, Psychological Action, Geo-strategy, Subversive action, and everything related to strategic intelligence.” Lower rank officers took a ten days course on “counter-subversion, intelligence, psychological action, urban tactical operations, communications, explosive, shoot targeting”.(I.O., 2/6/1984).
precincts to crack down on urban disorder. Responding to human rights activists—newcomers to the field in the 1990s—he then abandoned the mild turn to community policing for electorally hip iron-first policing. The National Constabulary was further instrumentalized, as it was deployed to repress protests against structural adjustment programs in the whole country, returning to its militarized spirit and traditions, still combined with a ritual reference to the idea of soldiers of the law.

Menem’s pragmatic orientations differed almost completely from Alfonsin’s. He pardoned the military commanders for human rights violations and put the “philosophers” out of power. He also put an end of the liberal program of criminal courts reform I study in the next chapter. In the economic front, he abandoned Alfonsin’s social-democratic attempt of restructuring the state and the economy and opened and privatized the formerly protected economy to disarm or co-opt corporatist actors (Novaro 2009:237). In the police, he veered toward political policing first and then to a police populism disarming Alfonsin’s era reforms.

Right after his inauguration, on July 1989, he put another group of political intelligence specialists in power—who reinstated the doctrine of state police, which defined the police as in charge of judicial affairs but also counterinsurgency. Four months later, he deployed the teams in charge of privatizing public companies and reduced state personnel (Rinne 2003) to extend the program to the police. In late 1989 the police headquarters using the same language of structural adjustment reformers, engaged in a “profound institutional restructuring… adapting…different structural levels to reinforce operative sectors… and to deactivate sectors that have become irrelevant” (I.O., 11/30/1989). The sections considered “irrelevant” were the key developments of the Alfonsin era: the Judicial Affairs Directorate and the Internal Affairs Directorate. The objective of this order where nothing less than taking control of the police, or in administrative parlance to “attend to the politico-institutional requirements of the high command, leaving more thorough studies for the future” (I.O.,11/30/1989). The next year, through further “administrative rationalization” (I.O., 12.11.90) the docile high-command dismantled the planning and auditing capacities of the police concentrating internal discipline and administrative control in the chief. Here managerialism, instead of rationalizing deployment or increasing accountability toward client-citizens as in Chile, served the executive branch to get a tighter grip on the force and to privilege “operative functions over logistics and administration” (I.O., 11/13/1992).

Throughout Menem’s first term, the dominant political intelligence sectors closely followed the changing priorities of the executive branch—and implemented the required organizational changes when needed. In 1990, the Interior Minister organized the X1th National Police and Security Forces Chiefs Meeting, where the Executive enhanced the

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88 According to a 1991 editorial in the house-organ Revista de Policia on “The Police Function” the “Federal Police operates as a metropolitan and federal security and judicial police and as a state security police (Revista de Policia, Mar-Jun, 1991) According to police intellectual Fentanes the state police “perfects its tactics and services to efficaciously fulfill its mission of protecting authorities and the constitutional order against the extensive and refined modalities of insurrection and subversion of modern times”(Fentanes 1979:110–133).

89 He dissolved, within the Planning Superintendence, the Medium and Long Term Planning Department, in charge of strategic mid and long term planning and the the Legal-Technical Department, in charge of codifying such planning and the Plans Department, in charge of monitoring their implementation. Tellingly, the Plans Department becomes the “Human Resources Department.” See I.O. 11/12/1990.
coordinating capacities through the Interior Secretary. In 1992 the government passed the Interior Security Act (24.059), creating an Under-Secretary of Security, to coordinate the national police efforts, dealing with violence, terrorism, but also “the prevention and repression of social conflicts” and the coordination of private and public agents to “prevent and repress crimes that affect national economic activities” (Presidential Message 1992: 7). Later on, when members of the force appear involved in covering the terrorist attacks to the Israeli Embassy in 1992 and the Jewish Mutual Aid Association in 1993, Menem removed the chief but put another intelligence specialist in charge, Adrian Pelachi,90 who was aided by Deputy Chief Baltazar Garcia.91 As Menem promised the US to reinforce counter-terrorism and anti-narcotics capacities aided by the US Federal Bureau of Investigations, the police rapidly strengthened counterterrorism, and then forensic and criminal investigations units to control counter-fight, money laundering and drug-trafficking (I.O. 4/12/1995).

During Menem’s first administration Argentine National Constabulary force turned to both anti-narcotics, international peacekeeping (Carlson 2004), and most importantly, to repress protests against privatization, once more emphasizing its role of back-up force for when the provincial or Federal Police would be overcome by protests. After members of the Federal Police were accused to be involved in providing protection to of the 1992 and 1993 terrorist attacks Menem deployed it the capital city of Buenos Aires since 1993 to provide security to Jewish establishments and release Federal Police personnel to provide street patrolling services. In this process, the Federal Police did not object the presence of the National Constabulary in the capital city and the National Constabulary did not oppose their partial removal from border patrolling. This institutional docility continued during the second administration of Menem

After being reelected in 1995 Menem extended to the Federal Police his “Second State Reform” project based on “labor productivity” (Rinner 2003:36). In 1996 Chief Pelacchi launched the police “Modernization Plan 1996-1997” (I.O., 2/13/1996), which treated citizens as clients and introduced, as part of huge public relations campaign, new uniforms and the logo “serving the community”—appeared on patrol cars and police stations. It was in this context that community policing programs suddenly appear in the policing arena (I.O. 2/13/1996), imported by Chief Pelachi, who “learned about them at INTERPOL meetings” (Interview, Adrian Pelachi, July 2010). Very rapidly the Federal Police chief mandated that precincts officers organized meetings with neighbors (Eilbaum 2004). But just as it was rapidly introduced, it was rapidly dismantled. The “community policing” program had an extremely short and superficial life as the “modernizations” coincided with a politicization of crime that lead to a stronger repression of loitering, prostitution, and misdemeanors and the use of more stringent and

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90 Pelachi has worked in the metropolitan Under-directorate in the early 1970s but since then he served in the political policing sectors: in the Federal Security Directorate during the the dictatorship years, in the Directorate for the Defense of the Constitutional Order in the 1980s, and in the early 1990s he directed the Trains Security Under-Division, a crucial position to aid the government in the conflict around trains service privatization (Interview, Adrian Pelacchi, July 2010).

91 Baltazar Garcia had a law degree and is a specialist in project management. See La Nacion “Definen la nueva cúpula de la Policía Federal” 9.10.1997.
arbitrary identity checks. These more aggressive policing was in turn answered by the political opposition who allied themselves with a new set of experts that entered into the policing field in the mid-1990s, the human rights activists.

In the early 1990s human rights activists began fighting for regulating police discretion to reduce abuses. Human rights activists—in particular the Center for Social and Legal Studies (Centro de Estudios Legales y Sociales - CELS) and Coordination Against Institutional Repression (Coordinadora contra la Represion Institucional CORREPI), both with a long trajectory in Argentine politics, reinvested their political capital and know-how into fighting police violence after Menem’s amnesty law put the dictatorship-era human rights issue in suspense. CELS had worked very closely with human rights violation cases fighting the dictatorship and started work on human rights abuses by police forces as early as 1991.

This coincided with an opposition to Menem´s amnesty to the military, but was also part of a more general turn toward professionalism of human rights activism and an internal reorganization sponsored by international sponsors, in particular the Ford Foundation (Interview Josefina Martinez, March 2010). Renewing their international contacts in 1993 and 1994 CELS started documenting police abuses and killing (CELS, 1998). CELS intervened investing its academic networks and formats criticizing public policies and institutions. Eventually they engaged in judicial activism through class-actions and collaborating with authorities (Interview Josefina Martinez, July 2010). By 1997 they were part of the international network sponsored by the Ford Foundations investigating civilian control over police forces. CORREPI, instead, more directly connected with the Argentine Communist Party, and with the League for the Defense of Human Rights, and with a historical opposition the state, followed a judicial strategy, legally sponsoring victims of police abuse to fight their cases in courts.

The emergence of human rights activists in the policing field coincided with changes in the political field—with the comeback of the UCR after it negotiated the constitutional reform that permitted Menem’s reelection and the creation of Buenos Aires City government with executive, legislative and judicial branched. In 1997 the newly created Buenos Aires City Government, with the backing of human rights associations and some of the “philosophers,” passed a Code of Urban Public Behavior (Codigo de Convivencia Urbana), which both legalized prostitution and loitering and took away from the Federal Police the power to detain people on misdemeanors cases on the ground of suspicions (Tiscornia et al. 2004). The Ministry of the Interior, responded in turn to the passing of the code ordering an even more aggressive policing, implementing 1970s era dragnet operations (I.O. 11.15.1998). Once more feeble institutional developments, in this case, community policing, were swept by the political interests of the executive branch of deploying the police in a way that could profitable in the electoral arena.

With the president’s urgency of dealing with urban crime becoming a priority, and the ascent of the Intelligence State Secretary, within the bureaucratic field, political policing experts lost power in the hands of officers in charge of the Buenos Aires city police precincts, which I call the “metropolitans.” Baltazar Garcia, an officer with a

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93 Interview Josefina Martines, Centro de Estudio Legales y Sociales (CELS), November 2009. A first product of this turn is CELS (1998).
career in the metropolitan Under-Directorate became chief (La Nación 1999a). With the metropolitans in power, violence and killings on the streets increased dramatically. The politically docile criminal courts, also controlled by Menem (Verbitsky 1993) did not curb in police violence. The orientation toward urban order, favored the rise of metropolitan officers and, subordinate to them, of two groups of criminal investigation specialists: “forensic specialists,” and “criminal investigations” experts in counter-terrorism. The struggle between these three groups combined with political strife and the economic crisis of 2001 shaped and, ultimately, impeded President De la Rua own attempt to change the police.

The brief appearance of zero tolerance in the Argentine policing field: It is in this context that zero-tolerance arrived to Argentina in the late-1990s, where it was briefly but swiftly embraced. With the 1999 presidential election in sight, in 1998 William Bratton, from the New York Manhattan Institute arrived to Buenos Aires (Wacquant 1999: preface). The executive branch used the “zero tolerance slogan” (Wacquant 1999) during the presidential campaign—just as Major Lavin had done in Chile that same year—at the same time that he gave free reign to the metropolitans to intensify detentions. Zero-tolerance resonated well to the metropolitans within the Federal Police with their traditional tactic of massive preventive detentions, and even legitimated their new dominating position with the force. However after the presidential election of 1999 zero tolerance was promptly forgotten, and survived not beyond the defeat of its second importer—former economy minister Domingo Cavallo—in the electoral competition for major of Buenos Aires in 2001. After the election campaigns were behind, zero tolerance left no distinguishable institutional trace within the Federal Police. The political importation of zero-tolerance operated in a very different arena to that of Chile. In Argentina its political use was as short-lived as in Chile, but it was not the police and the executive branch and experts who limited the advance of Bratton in the federal police—as in Chile—but political parties in the opposition. As the executive branch that imported it lost power—Menem was defeated—and the metropolitans were suddenly put in a second rank position within the force, zero tolerance lost currency.

94 In the following two years police killing increased from 83 deaths in the hands of police officers in the first semester of 1993, to 137 in the first semester of 1999 (Sozzo, 2002) (See also La Nación 04/28/1999 “Prometen reforzar la vigilancia en las calles.”) Interior Minister Corach defended the policy as oriented to “defend the capacity of the security forces to protect attacked citizens, and put an end to legal trials where police officers enforcing the law are the main suspects” (I.O. 10.18.1999).
Figure 2-5  Federal Policing field Argentina, circa 1998

- Juridical field
- Political Field
- Policing sector of bureaucratic field

+ Authority

- Judicial Courts
- Interior Ministry
- Buenos Aires City Govt.: Mayor De la Rua (UCR)
- Executive Branch: MENEM

- Academic Field
- Journalistic field

Formal law enforcement orientation politico-economic concerns

Bold: new agents
2.4.2.3. Reform and counter-reform II: The Radical Party management and pro-legality reform and second Peronist re-destruction (2000-2003)

In the policing field of Argentina dominated by political agents, throughout the decade, the political needs of the executive got rapidly translated into police policies that produced changes in the police fractions but did not produce any long term radical change as in the Chilean Carabineros or the Investigative Police. The same pattern can be observed in the first half of the 2000s. President De la Rua, (2000-2001) governing in a coalition of UCR and the center-left National Solidary Front (FREPASO), arrived to power looking for an economic reactivation within an free market model, promising to reinforce public institutions by fighting corruption and modernizing the state (Novaro 2002). In the police this meant a new attempt to professionalize it around law-enforcement, a managerial modernization, strengthening planning and reducing operational costs. This second attempt will eventually fail.

President De la Rua designated a forensic investigations specialist, Ruben Santos, as police chief. He preferred somebody from forensic investigations sector over the metropolitans as the later were seen as corrupt and did not match the anti-corruption stance of the new Radical Party administration. The executive branch promised to “change the security policy 180 degrees” reinforcing surveillance and investigative capacities of this section and retaining a federal investigative police. To reinforce his position, Chief Santos revived the Planning and the Internal Affairs Directorates (I.O, 1.14.2000)—both destroyed by Menem in 1992; he put the “criminal investigators” to fight common and organized crime in the metropolitan area; ordered political policing units to focus on federal crimes and tax fraud, and sent riot control groups to patrol the streets. These transformations, however, instead of bringing more efficiency, exacerbated internal conflicts, leading to a sudden increase in legal scandals, “errors” and killings by the police.

On December 2001 the metropolitans, and within them the riot control unit (Guardia de Infanteria), in alliance with the displaced criminal investigation experts, contributed—by enraging demonstrators in front of the federal government building in Buenos Aires—to the social and politically leaded mobilization that removed president De la Rua (on these events see Auyero 2007). After De la Rua resigned Chief Santos was removed and an officer from the metropolitans, close to former Menem’s vice-president, Carlos Ruckauf, took his place. The loss of power of the national executive under President De la Rua (Novaro 2002) but also the incapacity of Santos to rein in the subordinate fractions, in part due to a budget crisis, aborted this second reform attempt.

With the return of Peronism to power in 2002, president Eduardo Duhalde again destructed the Planning and Internal Affairs Directors, which have been reinforced by De

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95 In late 1998 the Metropolitan Superintendency was found involved in a big corruption scheme (“Se dificulta el traspaso de la Federal”, La Nación 10.22.1998 ), and by mid-1999 the Metropolitans were already considered a last option by all the political candidates who preferred the more technically and professionally qualified Criminal Investigations, Anti-narcotics or Forensic experts (see “El Futuro Político de la Federal. Qué hacer con ellos” in Pagina 12, 7.9.1999).

96 “Perfil más técnico para la policía” in La Nación, 01.07.2000.

97 In August of 2000 the metropolitan superintendent was found guilty of covering the escape of three important criminals from the police headquarters, a move oriented to produce the removal of the police chief. See “Imputaron por fuga a Galvarino” in Pagina 12, 9.26.2000.
la Rua and Santos. In turn, President Duhalde did not engaged in any systematic process of police reform, nor did his successor. In 2003 after another faction of the PJ reached the presidency with Nestor Kirchner, the government dismantled the planning division reinstated in 2000 (Interview with Planning Directorate officer, July 24, 2009). He also ordered riot control units to police demonstrations without fire weapons. This time the Riot Control Unit, now back in power, as part of the alliance with the metropolitans, complied. Presidents Nestor Kirchner (2003-2007) and Cristina Kirchner (2007-), maintained the metropolitans in power putting a new sector of them in charge. Chief Valleca, with a career in the metropolitan division (See La Nación 1.9.1997) has been in power between 2004 and 2009. In this period, the metropolitans reigned unmolested, over the mostly unchanged and politically protected Argentina Federal Police.

Since 2003, however, instead of reforming the Federal Police the Peronist Party administration began once more changing the role of the National Constabulary. Since 2004 the National Constabulary has been deployed in the metropolitan area of Buenos Aires to deal with urban crime. After being used by presidents during the 1990s and early 2000s to repress protests, in 2004 part of the National Constabulary was deployed to patrol sectors of the metropolitan area of Buenos Aires. Since 2011, they began being deployed in the southern sectors of the federal district of Buenos Aires. Today around 3000 National Gendarmerie officers operate in the City of Buenos Aires (Gendarmeria Nacional 2011), the historical bastion of the Federal Police. Even if in early 2004 National Constabulary officers were opposed to their deployment in urban scenario performing preventive policing, since 2005, their initial objections have been completely ignored and since 2011 a tenth of the force performs preventive policing in the metropolitan region of Buenos Aires.

2.5. Explaining police change within policing fields: discourses, politics and the system of police forces

In this chapter I have both explained the social genesis of the contents of demands for “democratizing” the police after the retreat of the military tracing the trajectory of the reformers from the political and academic realms and into the policing field after the inauguration of democracy. I then explained the specific impact that the struggles around reform had on the police bureaucracies. These different outcomes result from the different alignment of forces and position-taking of actor in three differentiated spaces of relations: intra-police, inter-police and police-central government relations. In Chile within the highly autonomous Carabineros the ascendant managers led an process of self-reform where they expanded their power within the force, but at the same time changed the mission definition, the Carabineros deployment strategy, the training of its officers and incorporated accountability practices periodically reporting on its works and productivity. This intra-police dynamics converged with the attack of a coherent central-government which tried to increase its authority over the Carabineros. At the same time that government attacked the Carabineros it penetrated and reinforced the historically heteronomous Investigative Police and reformed it from the top-down in line with the programs and standards proposed by the new experts in the policing field of Chile. The docile and subordinated Investigative Police officer willingly collaborated in their own transformations, which also allowed them to leave behind their identification with the
military, under whom they had worked during dictatorship. The subordination of the Investigative Police was such that it not only implemented a managerial rationalization of their practice (espousing a discourse of service provision) but it even incorporated community policing strategies trying to reach out to the citizens and having a program to receive their inputs on policing. These processes (the dynamics within the Carabineros fractions and the advance of the Investigative Police) converged with the constant pressure over the executive branch backed by highly ideological and platform-based parties operating in a consensual party system.

In Argentina, after two decades of democracy, by contrast, the Federal Police and the National Constabulary have not changed their mission definition, organization, or its authoritarian practices, and remain subordinated to the central government and, through it, to operators such as parties in the political field. The intra-police hierarchies were constantly and abruptly changed by the changes in the political orientation of the executive branch following changes in the president or under the same president in different political moments. In the relations between the heteronomous police forces and the executive branch the personalism and institutional weakness of the Argentine party system (Levitsky and Murillo 2005) got easily transmitted to the police bureaucracies producing discontinuity of reforms and very limited change. The constant turns in policies and orientations also reduced the capacity of the police elite bureaucrats to provide themselves with a new legitimating discourse to replace its conservative mythology (Hathazy 2012) and militaristic and corrupt practices (Eilbaum 2009; Tiscornia 2004).

How does this field analysis and account enrich our perspectives on bureaucratic change within the literature on the police? Regarding the sociology of penality, the analysis of the structure and dynamics of the policing field replaced the too-general problem-solving mechanism of Garland. Second, going beyond ideal-typical representations of action of typical bureaucrats and political agents, I engaged in a historical reconstruction of the objective positions of police bureaucracies (and police fractions within them) until the moment of transition and then accounted for the structurally determined strategies and interests of political agents of police bureaucracies and intra-police fractions, all of which decisively conditioned the reception of the new reform models. Thirdly, I have shown also that it is the structure of interests and power within the policing field what validates reform initiatives, and not political ideologies and cultural preferences (Garland, 2002). The structure and struggles within the differently structured policing fields also explain the dynamics of contestation over new political rationalities of managerialism (O’Malley 1997), something which the foucaultian perspective leaves under-analyzed, and which it is difficult to explain within it. From the field theory perspective new rationalities and techniques appear in the field through the strategies of agents carrying them while the structure of the field shapes the “contestation” (O’Malley, 1996) over rationalities. The power-differentials of the specifically located agents account for the differential institutionalization of the same rationalities and technologies.

Regarding political institutionalist perspectives on reform, the field approach coincides with them in that political factors and interests are critical to explain change (Heredia and Schneider 2003, Kaufmann 2003). However, it differs in two critical aspects. First, it put the positions and interests of bureaucratic agents (and intra-
bureaucratic dynamics as well) at the center of the analysis, at the same time that it introduced in the analysis not just power differentials, but also the trajectories of agents involved, adding temporality and the constitution of the dispositions of agents to account for their position-takings within the field. In that respect we can understand the rejection of the Carabineros elites to any advance of the executive branch, if we take into account not only the dominant position of Carabineros, but also its experience during dictatorship of having to constantly confront the attacks of Pinochet. At the same time, we can not explain the ascendancy of the management experts within the Carabineros in the 1990s if we do not take into account the long fight against the counterinsurgency experts since at least the mid-1970s. Second, the policing field concept, by taking into account the space of police bureaucratic institutions highlighted processes of inter-bureaucratic competition, instead of considering bureaucracies independently of each other, as isolated and as passive objects of political capture or sponsorship as the political incentives approach does. The competition between bureaucracies—between the Carabineros and DINA and the Army during dictatorship in Chile, or between the Carabineros and the Investigative Police, explains the position-taking of the elite managers of these organizations at different moments. Only from that perspective we can understand that in Chile the executive branch between 1990 and 2000 reinforced and changed the Investigative Police from a political intelligence police into a criminal investigation force (Herrera and Tudela 2005; Lunecke and Candina 2004; Policía de Investigaciones 1998) to counter the power of the Carabineros. In turn, we can only understand the interests of Carabineros in developing criminal investigation capacities if know that the Carabineros, invested in such capacities to counter the advance of the Investigative Police after failing to absorb the Investigative Police (Fruhling 1998). In the Argentina case, inter-bureaucratic clashes and competition explain the constant administrative advance of the military and the militarization of both the Federal Police and the National Constabulary before dictatorship, while the history of constant penetration of military and political agents accounts for the docility of police elites to external demands in democratic times.

Finally, by elaborating the concept of policing field I provided an account that connects transformations of the penal sector of the state with macro-structural economic transformations and neoliberal politics. By getting down to the meso-level of political and bureaucratic dynamics within the policing field I showed that national political and bureaucratic structures produced very different evolutions in the police forces coming out from dictatorship, even under similar conditions of politicization of crime fear, a similar advance of neoliberal rationalities (O’Malley 1997), and within the common intensification and exaltation of the penal state in these two countries following neoliberal restructuring of the economy and the state. The comparative field analysis of the police has been the first building block toward understanding more specifically why in Argentina the police forces contributes toward what Wacquant, describing the evolution in Brazil, has provocatively called a “veritable dictatorship over the poor” (Wacquant 2003) in democratic times, while the highly autonomous and powerful Carabineros, which were part of the military Junta, veered into a legitimate and legitimating provider of citizenry security in the Chilean neoliberal democratic order.

Having explained the contents, the directions and results of the police reforms attempts in Argentina and Chile in the democratic period, I turn now to the transformations that took place in the criminal courts system. Such reforms follow a
similar path of successful reform in Chile and relative failure in Argentina, and in turn have important effects over the police in those two countries, as I show more forcefully in chapter five, where I integrated the different causal series and observed their effects on the reconstitution of the relations of the post-authoritarian penal fields.
Chapter 3
Reshaping criminal courts: politically tailor-made justice in Argentina and judicial state-building in Chile

[Synopsis chapter Three]

[In this chapter I (i) account for the post-transition emergence of similar demands for new adversarial criminal procedure codes, for a powerful independent prosecutors’ officer, and for a managerial reorganization of court work in both countries; and (ii) explain the full adoption of the model in Chile and its extremely limited adoption in Argentina. I show that demands for such changes emerged from the (re)reconversion strategies of newcomers to the judicial field, who converted their capital from the academic sector of the juridical field into the political sector of the penal field, activating, with different dispositions, the older position of “criminal procedure code writer-reformer.”

As in the analysis of the police, I divide the account into two parts: A first, more objective analysis, and a second part where I provide a strategic analysis. In the objective moment, I reconstructed the historical position of criminal courts within the juridically rich pole of the penal field. I also trace the emergence of the figure of the “criminal procedure code-writer and reformer,” which arose in Argentina in the 1940s and in Chile in the 1960s. This figure was consolidated in the academic pole of the juridical field in each country following transformations in legal education (which occurred in the 1930s in Argentina and in the 1950s in Chile). The position of code-writer-reformer was repeatedly reactivated by new generations of judicial newcomers, revived with the different dispositions of their occupants at different times.

After this historical reconstruction, I turn to experts’ and political agents’ post-transition strategies. In Chile, in the 1980s and 1990s, economists and management experts joined criminal procedure reform experts, each of them reactivating with their activist oriented and entrepreneurial dispositions the old position of code-writer reformer. The difference in outcome of the struggles for reform in the two countries derive from the (i) difference in balance of power between the executive branch and courts and (ii) the interests and orientations of the executive branch and of the party in power during the struggles around reform. In Argentina, the weakness of reform (which left in place a mostly inquisitorial written procedure, with powerful but politically controlled judges that investigate and adjudicate, and a weak prosecutor) is due to the executive branch and the governor interfering so as to preserve the positions of powerful judges. Political agents preserved their control over justice by keeping in place the powerful judges they controlled. In the new structure of the criminal courts field, the criminal courts personnel and budget still double those of courts. In Chile, by contrast, the executive, backed by all parties, imposed the reform over a politically insulated—but weak—judiciary dominated by the Supreme Court. It created an independent attorney general’s office that monopolized investigatory powers and directed the investigative police. Here the prosecuting bureaucracy acquired much more bureaucratic-judicial power, controlling, after the reforms, two times the personnel and resources that the weakened courts control. In that manner, they were able to both subdue the courts and create a massive bureaucracy that is highly legitimate in the eyes of the citizenry and politically profitable as it appears to provide security and justice to the public in an efficient way.]
3.1. Understanding the origin and outcomes of criminal justice reforms

In this chapter I dissect to the evolution of criminal courts after the transition to democracy. In Latin America, as many works show, courts have been either highly arbitrary and discriminatory (Iturralde Sanchez 2010b), or passive and weak in defending subordinate groups or political activists from the police under elected presidents, military dictators or paramilitary groups (L. Hilbink 2007; Weiss Fagen 1992), usually both. The Argentine and Chilean cases are no exception to the pattern of historically weak judiciaries, which are both unable to limit the powers of the executive branch and highly inefficient in processing cases. Yet, after the return of democracy, governments and civil society agencies have struggled to reinforce the power of courts to protect the rights of defendants, as well as to make sentencing processes more efficient.

The main criminal courts policy shift after the transition to democracy in Chile and Argentina has been to replace the inquisitorial written procedure—dominated by judges who investigate and adjudicate—with an “adversarial” system. This reform plan meant changes in the criminal procedure but also a new division of judicial labor where prosecutors investigate and judges adjudicate (Langer 2007). Reformers also proposed administrative changes, including the centralization of managing divisions in the courts and prosecutors’ offices.

As in the police field, the Chilean criminal court system shifted towards this model of a new division of labor. In Argentina, by contrast, the federal justice criminal procedures remained very similar to those that preceded them, though taking on the trait of what scholars call a “mix code.” In this model, judges still control the investigation, but they incorporate oral hearings. Only 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 (CEJA 2008).

Figure 3-1 Criminal courts participation budget, Argentina (Federal) and Chile (1970-2006)

![Graph showing the participation budget of criminal courts in Argentina and Chile from 1970 to 2006. The graph illustrates the percentage of state budget allocated to criminal courts over the years, with a noticeable increase in the budget post-reform in Chile.

Source: Oficina Nacional de Presupuesto of Argentina (2006) and National Statistics Institute of Chile.

Even if in both cases the criminal court bureaucracies increased, actually doubling their personnel and resources (as can be observed in table 3.1), the growth of the Chilean criminal justice has been more stable and more important than can be gleaned from the budget. While the internal distribution of power changed in Chile after the reform, in Argentina the internal distribution of power between the judiciary and prosecuting and defense remained similar to that before the transition. After reform, judges in Chile became a minority within the penal judiciary, and ended obtaining a smaller participation in the justice budgets than that of prosecutors. In Argentina, courts still dominate this sphere, in terms of personnel and resources (see figure 3.2), as well as in the actual control over investigations and prosecution.
Whereas in Chile the Prosecutors’ Office (ministerio publico) directs and decides a unified prosecuting policy executed by regional and district prosecutors that monopolize criminal investigation, in Argentina, even if there is also a Prosecutor’s Office, it is unable to implement such general prosecuting policy. There the judges largely do the investigating and, without following any general criteria, they decide on a case by case basis whether to delegate investigations to the prosecutors that correspond to their courts. This division of labor in Argentina’s federal crime courts remained almost completely similar to the situation prior to reform (see table 3.1). Here, where the regional movement of criminal procedure reform first arose (Langer 2007), the accusatorial system was only feebly institutionalized. Sentencing is still based on the written dossier of the investigatory phase rather than on evidence produced in oral hearings. Prosecutors work independently from each other, with no unified direction, while the police still control investigations.
Table 3.1 Pre and post reform features of the criminal courts in Chile and Argentina

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<tr>
<td>Court Administration</td>
<td>Decentralized (judge administers courts)</td>
<td>Decentralized (ibid.)</td>
<td>Decentralized (Judges based)</td>
<td>Centralized administrative office serves many courts.</td>
</tr>
<tr>
<td>Pre-trial detainees</td>
<td>70 %</td>
<td>60 %</td>
<td>60 %</td>
<td>25 %</td>
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</table>

Before briefly discussing theoretical alternatives and then engage in the analysis I want to remind the reader that I am comparing the evolution of criminal courts in the criminal courts system of Chile, which a national unitary administration regime, with the changes in the federal courts justice system of Argentina, that is, with the courts that correspond to the federal government. I want to account for the emergence and outcomes of reform programs related with criminal procedure, that is to the procedure that regulated investigation and adjudication in criminal courts. Both the the Federal Judiciary of Argentina and the judiciary of Chile are divided in hierarchies and specializations (fueros). They are composed by a Supreme Court, first instance-courts (juzgados), oral tribunals (tribunales orales) and appeals courts (cámaras). Each tribunal has jurisdiction over certain specializations (fuero). These fueros are: administrative law (Fuero Contencioso administrativo), civil and commercial law (Fuero Civil y Comercial Federal), electoral law (Fueron Electoral), and criminal law specializations. The criminal law courts and tribunals have jurisdiction over common crimes in the city of Buenos Aires, and over federal crimes in all the territory. In the city of Buenos Aires, the common crime jurisdiction is divided in minor crimes courts (Juzgados correccionales) and crime courts and tribunals (Juzgados and Cámaras del crimen). I am studying the special procedure that regulates criminal investigation and adjudication in the courts specialized in criminal matters. Within the federal district we also find the Federal Crime
courts and Tribunals that intervene in federal issues. These issues are usually cases involving federal authorities that reside in the capital city and drug cases, also a federal crime.

3.2. Explaining the origin of demands for criminal procedure reform and their differential adoption in the Argentina and Chilean courts

To explain the origins of criminal court reform in these two cases, I start by breaking with the commonsense (but also academic) narrative of reform as the necessary and natural catching-up of local courts with the developments of Western legal modernity. According to a generalized common sense view shared by reformers themselves, the judicial systems in the region have remained unaltered since colonial times. They […] were left outside the process of transformation of inquisitorial procedures that European countries experienced after the French Revolution that permitted its adaptation to a political context where the individual acquired the right to confront the state. [Present day reform] was a matter of putting them in harmony which the evolution of European inquisitorial systems of the last two-centuries (CEJA, 2005:7).

This narrative reappears in theories advanced by legal scholars that explain the emergence of reform after transition as a means to protect citizens’ rights, fulfilling the new standards of a democratic regime (Langer 2007; Riego 1998). Less idealistic perspectives attribute the origin of reform to political interests, invoking concrete political interests. For some, and in particular for reformers themselves, the former local authorities’ pragmatic concerns for efficient and effective criminal courts to deal with crime and insecurity ignited the interest in reform (Riego 1998:442; Hammergreen 2007). Other authors highlight the role of foreign authorities or agencies, arguing that these authorities imposed new criminal procedure models or institutions on national judiciaries. Political scientists Peter Andreas and Ethan Nadelman (2006), for instance, sustain that foreign judicial and administrative authorities promoted reform to better criminal courts and prosecutions abroad. Socio-legal scholars, instead, claim these reforms are a result of the advance of a hegemonic process of legal and economic globalization (Santos 2001). In this scenario, criminal procedure reforms respond to foreign governments’ geopolitical interests (namely those of the US) in securing favorable investment climates, stable governments, and the rule of law—all to buttress and legitimate the new neoliberal global order (Rodríguez Garavito 2001).

Despite the fact that reform efforts in these two cases were presented as contributing to crime reduction, and then were later on backed by foreign authorities and increased in some cases the efficiency of courts, the existing accounts do not suffice to explain the cases at hand. First, while it is true that the transition to democracy is relevant for reform, the transition to democracy by itself does not lead to the adoption of an adversarial criminal procedure, or to the development of a public prosecutor’s office. There have been transitions to democracy in Chile (1931) and Argentina (1945, 1958 and 1973) before and none of them led to changes the criminal procedure. Perhaps even more
tellingly, similar reform proposals were present in Argentina and Chile many decades before the most recent transition to democracy. Instead of seeing these reforms as ineluctably tied to democratic transition, we should instead think of democratic transitions as political opportunities for actors who might propose reforms.

Second, in regards to the foreign conditionality thesis, we will see later that the recent reform proposals in Argentina and Chile were already out in the policy arena in both countries when local reformers contacted USAID and the US Department of Justice. What these theoretical approaches miss is the blind spot beneath the common sense narrative of legal evolution and the primary cause for the emergence of demands for judicial reform: the local 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 after the transition.

Here I show that criminal court reform emerged from the reconversion strategies of legal scholars—revitalizing the old position of legal reformer—in the academic sector of the juridical field and deploying it in the political sector of the criminal courts field. In Chile, economists joined these legal scholars and became criminal justice experts. To account for the emergence of reform, I examine how these experts were embedded in the criminal courts field—the space where agents vie for the authority to determine criminal courts’ roles, policies, and priorities. This field is located at the intersection of the juridical field, the penal sector of the bureaucratic field (which monopolizes the public authority over the investigation and sanction of crimes), and the political field. Agents possessing juridical, bureaucratic or political capitals vie and confront each other over criminal court policies and priorities.

In each country, agents from the academic sector of the juridical field reconverted their juridical academic capital and their social connections (acquired before and during dictatorship years and the first years after transition) into capital of authority over criminal court policies. These legal experts were joined by economists and managers, who themselves became in the democratic era recognized authorities on criminal-justice issues, even if they occupied a dominated position within the field at the beginning of democracy. The new legal and economic experts exploited the opportunities opened up by the political transition, the politicization of crime to advance their theoretically based discourses and models and, with political backing, to impose them on the judges who were the dominant agents of the criminal courts field. These experts engaged in reconversion strategies, either redeploying their international capitals, acquiring international contacts and credentials, as well as deploying their local political and social connections. They were connected to both the US and Europe, but were also regionally networked. Their reconversion strategies coincided with that of political agents (the central government and legislature) who wanted to change the judiciary—to weaken the

1Within the criminal courts subfield, located at the intersection of the juridical, bureaucratic and political fields, we find agents primarily located within the juridical field, that is “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” (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, as they monopolize the public authority to investigate and adjudicate penal cases. We find, finally, the central government and political agents. We also find agents from the academic field, and the professions and the journalistic fields.
conservative judges in power in Chile, and to reinforce courts to fight the military and to implement their government programs in Argentina.

I am not the first one to follow this field theory approach to explain the emergence of programs of criminal procedure reform in Latin America. Dezalay and Garth (1998a, 1998b) also trace criminal court reform back to the convergent strategies of human rights scholars and economists in post-authoritarian Argentina and Chile. I share their approach, but argue that those human rights scholars in the 1980s in Argentina and legal scholars and economists the 1990s in Chile were continuing and revitalizing an older position of the juridical field, that of the criminal procedure scholar-reformer, which has been preserved and revived by new generations of newcomers to the juridical field since the early 1940s in Argentina and the mid-1960s in Chile. This position, as I show, has always involved international strategies, but has been very weak at previous stages of the field. In the post-transition context of the 1990s, the new occupants of this position were able to mobilize more resources that were not limited to juridical elaborations, but which were instead combined with economic analysis, social studies, and international financial backing. With these new capitals, but also bringing to it new activist and entrepreneurial dispositions, the new occupants attempted once more to impose learned standards on criminal justice operators. The convergence of their strategies with those of agents of the political field determined the efficacy of each reformer in reshaping crime courts.

The contemporary legal reformers continued the position of the scholar-reformer and reinforced it with new arguments and rationales derived from international human rights doctrines and managerial know-how. In recent decades, economists and management experts joined the legal scholars in the position of criminal court reformer. The economists followed a path trodden by legal scholar who came before them, making themselves a position in the academic sector of the criminal courts subfield before entering into governmental positions, or reconverting the know-how they had by virtue of their political contacts, thereby becoming authorities on criminal courts policies. To show that reforms in criminal procedure in Argentina and Chile arose from the reconversion strategies of legal and economic activist-scholars I (a) reconstruct the emergence of this position in each national field decades before the recent transition to democracy and (b) follow the trajectory of the inheritors of that position within the academy and the criminal courts field in the democratic period.

But let us remember that common origins do not necessarily imply common destinies. I must also explain the substantial changes we observe in Chile and the continuity we see in Argentina. The theories available to explain these different outcomes are of two types. One type explains the presence or absence of reform by

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3 Palacios (2011), explaining the origin of criminal procedure reform in Chile also traces them back to the professional trajectory of the contemporary reformers in the local judicial field who exploit a greater movement to transform justice just after the transition. He doesn’t inquire, however, on the origin of that reformist position in the local national fields, a position that predates the transition to democracy, and which allows criminal code reformers to capture the general justice reform efforts sponsored by the political agents in democratic times. He also minimizes the role of economists as new reform agents within the criminal courts system.
pointing to the interests of authorities, and in particular, the interests of the executive branch. The other type of approach downplays strategic interests and instead points to institutional and historical conditions. Studying reform processes in Argentina and Venezuela, socio-legal scholar Mark Ungar (2002) attributes the failure of reform to executive branch interference, where the executive branch obstructed and eventually undermined judicial reform when judicial independence threatened its prerogatives. This thesis might explain the limited reform Argentina saw in 1992 under Menem, but does not explain the initial failure of the first reform attempt between 1984 and 1989. Indeed, after the transition in 1983, President Alfonsin backed a reform project that, if passed, would have meant losing control over prosecutors (who were to be placed under the orbit of the Supreme Court).

Political scientist Anthony Pereira (2003a), without inquiring into the origins of these demands, advances a historical institutionalist argument, emphasizing path dependency and pointing to issues of intensity and strength of the reformist and conservative coalitions. In his view, the eventual implementation of criminal procedure judicial projects depended on the judiciary’s role during the dictatorship and how much this role was in question at the moment of transition. When the judiciary was central to the authoritarian regime, where a consensus between military and judicial elites existed, and where courts were able to uphold legal standards, as was the case in Brazil, the push for reform and the reform itself were weaker. In cases where justice was abruptly and extensively put aside, as was the case with Argentina’s dictatorship, reform also failed. Even if the judiciary as an institution was highly in question, democratic authorities inverted all their resources in settling accounts with their past enemies—what Pereira calls a “backlash reform”—instead of looking forward and investing in changing institutions. Finally, in dictatorships that incrementally invested in judicial institutions, as was Chile’s case, reform was successful. Given the low legitimacy of courts and the need to break the military-judicial compact, democratic authorities and reformers were propelled to advance reforms. In such conditions, they oriented reforms “prospectively” toward substantial issues rather than to mere political justice, and reforms succeeded.

While Pereira’s model is attractive for its parsimony, the developments in Argentina and Chile did not exactly fit his model. President Alfonsin and his team proposed, between 1984 to 1989, a “prospective” reform in Argentina, meant to institutionalize a new judiciary, and as such, it should have succeeded. In Chile, on the other hand, the reform was definitely a “backlash” reform, trying to remove all power from the hands of the conservative criminal court judges that had collaborated with dictatorship. Moreover, with Pereira’s model it is difficult to explain the criminal courts reforms attempted before and even during the dictatorship in Chile (Ministerio de Justicia de Chile 1980), way before democracy. His model does not historicize agents. Reformers simply appear to have been interested in accusatorial criminal procedure reforms and previous institutional conditions appear to have led to institutional change without agents intermediating. And, if agents did intermediate, the model allows no room for different dispositions to have existed within these institutional contexts. Finally, Pereira’s perspective also loses sight of the multiplicity of actors that converged to propel and resist reform. Just as authors who focus on political interests and executive branch interference need to take into account historical legacies, the historical-institutionalist approach to criminal procedure reform needs to bring agents back in.
Following the field theory approach, I incorporate the interests and strategies that prevented (or advanced) reform, and I locate them in historically specific systems of relations inherited from the dictatorship and in the settings in which the struggles for reform took place. From this perspective I argue the reforms were proposed by the new reform experts, activating with new dispositions the old position of code-writer reforms, and that the crucial differences that explain change in Chile and structural and institutional continuity in Argentina are (a) the differences in bureaucratic autonomy of the courts at the moment of transition and (b) the political orientation and interests of the executive branch and the style of the party in power governing the reform. Within this objective space, pro-reform and anti-reform coalitions were formed, aligning the different position-takings, determined both by positions and the dispositions, and leading to different evolution of the court bureaucracies.

The presence of executive-branch control over the judiciary (inherited from the dictatorship in Argentina, but absent in Chile) impacted whether the executive branch—and the agents of the political field more generally—invested in reforming the criminal courts. The differences in autonomy between the courts also determined the degree to which they could oppose reform. In Argentina, the great control of the executive branch and governors over the federal judiciary made investment in criminal procedure reform unnecessary and then, later on, limited the advance of reform. In Chile, the initially weak resistance of the judiciary to reform propelled (dominated) political agents to continue investing in changing a judiciary they did not control. These strategies of political agents and court elites were redoubled, within the space of experts, by the reformist take of the newcomers which was opposed both by the courts, but also by conservative legal scholars.

While we usually think of the court’s power as resting on it’s adjudicatory power, as a bureaucracy, its political power is based more on its capacity to present a unified front as a cohesive group that controls subordinates and that can counter the attacks of its opponents in an effective way. Apoliticism of designations and careers and the stability of appointments favor such bureaucratic power. As within the policing field, the differences in bureaucratic autonomy—in this case between the courts in relation to the executive branch and to the legislature—also determines what factor is most important for understanding change (or lack thereof). In conditions of high court autonomy (Chile), the struggle between the courts and the central government was the main motor for change. In conditions of low autonomy (Argentina), executive-branch interests and party styles were more important, as the judicial bureaucracy did not oppose the executive branch policies at any moment.

In what follows, I first analyze the emergence and outcome of reform (in terms of incorporation of the reform models proposed) in Argentina, and then turn to Chillean case. I start with Argentina in part because here is where the movement for criminal procedure reform arose, and in part because the failure of the local reformers led them to invest abroad, thereby setting the stage, but most importantly, providing the discourses and models for the evolution of criminal procedure reform in Chile. In each case I begin with a historical reconstruction of (i) the genesis of the activist-scholar reformers within the space of judicial academic production, and (ii) the evolution of the courts’ autonomy vis-à-vis political agents up to the moment of transition to democracy. After that I turn (iii) to the contemporary strategies and struggles involving reformers (coming from economics
and law and reviving and reconstructing that position and engaging in new practices given the dispositions of new agents), the judiciaries, and political authorities over transforming the courts by introducing a new criminal procedure and creating an independent prosecutors’ office.

3.3. Argentina: The land of criminal-procedure legal prophets, and of an archaic and heteronomous court system

3.3.1. The “author” of criminal codes: origin and trajectory of activist experts in criminal procedure

To explain the origin of contemporary reform proposals, we must first explain the genesis of what I call the “code-writer-reformer” position that emerged in the 1940s. This position was the predecessor of the scholar position typical of reform struggle leaders of the 1980s and 1990s. Most studies of criminal courts reform in Latin America refer to the Argentine Córdoba Province Criminal Procedure Code of 1939 (Langer, 2007; Riego, 1998; Duce 1998). This code—inspired by the structure of the fascist Italian Code of 1923 and in the same spirit as the liberal Italian Criminal Code of 1913—broke the inquisitorial tradition of criminal procedure codes in the region, and signaled the beginning of the contemporary “revolution” (Langer 2007) toward accusatorial modes and modern courts in the region.

In writing the 1939 Córdoba Code, Alfredo Velez Mariconde and Sebastian Soler—two law professors at the Universidad Nacional de Córdoba—created a position within the provincial juridical field, which was then replicated in other juridical fields: the figure of the “author” of criminal procedure codes. This position combined the authority of the pure legal theorist with that of the creative legislator. If we follow Bourdieu’s theory of symbolic revolutions (2000:84-92), we can attribute the novelty and ensuing prestige of this position to the fact that it constituted an “impossible possible,” in that it combined the opposite possibilities of the juridical field (Bourdieu 1987)—that of the pure theoretician of the law, and that of the experienced practitioner who knows the political and judicial terrain and acts as a legislator. After writing the code, the authors were transformed from recognized commentators of local and foreign jurisprudence into politically relevant authors of criminal-procedure legislation. Later generations of activist-scholars (usually newcomers to the legal professional) revived and exploited this position, with its dual academic and political components, to launch new rounds of reforms, emphasizing political elements at some junctures and academic content at others. These agents succeeded in presenting themselves as neutral scholars in times of political peril, and as involved theoretically sophisticated scholars and activists at times of political openings. The inherent duality of the position served as a platform to accumulate and reconvert each occupant’s academic-juridical capital into political or bureaucratic (judicial) capital, and vice-versa. At the same time the different occupants of this position took to it different disposition, reconstituting it each time (i.e. giving it an activist political orientation in the 1990s by the politically involved young lawyers in Chile and Argentina, or an entrepreneurial content by the economists in Chile).

The writers of the 1939 Córdoba code had convergent interests in investing in new legal know-how to create new position. They were either outsiders to the juridical field, lacking traditional social relations in some cases but who invested heavily in legal
theory to access (Soler) or had to reproduce their social position in the legal profession under conditions of increased competition. Sebastian Soler was a first-generation Spanish immigrant, deprived of social connections in the judicial fields, and who studied law in the 1920s. Velez Mariconde came from a traditional family from the provincial Córdoba elite that reproduced itself in the Cordoba law and medicine schools, and who faced renewed competition in the provincial academic environment of the 1920s. Soler benefited from the renovation in teaching and academic governance known as the “Reforma Universitaria,” a movement that started at the Córdoba University—one of the most important universities of Argentina at the time, along with those of Buenos Aires and La Plata—and spread throughout the continent, while those same changes lead traditionalist Mariconde to invest even more heavily to acquire a position in the judiciary and the legal academy which was being defied by middle class newcomers.

These changes in legal education, which repeated themselves in Chile in the 1960s, coincided with the political liberal questioning of state repression by ascending radical middle-class parties and with the labor movements of the 1920s and 1930s (Tcath 2010). Young, radical professors began to displace the older generation of law professors, questioning their legal doctrines. Having few social and family connections to legal world of Córdoba, Soler invested in scholarly capital, in new techniques for the analysis of criminal law. After meeting (future) Spanish exile and criminal law professor Luis Jimenez de Asua, who had studied in Germany, Soler brought to Córdoba the technique 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 that was hegemonic within criminal law doctrines and that based on medical observations, had dangerously “de-juridified penal science” (Cesano 2011b:76). The empiricism of comparative law replaced the empiricism of criminological positivism4 and allowed legal scholars to transform the traditional commentaries about criminal procedure legislation into a “science of criminal procedure.”5

The coherence and strategic use of imported doctrines described here contradicts Dezalay and Garth’s description of importation of foreign legal doctrines in Argentina as “comparative legal tourism,” where scholar import ideas from a variety of sources, where everything goes, just to “multiply foreign sources of authority” (1998a:33). In the academic pole of the juridical field of Argentina, in the 1930s, it was not just a matter of “multiplying foreign sources,” but of importing the legal doctrine that valorized the most their dogmatic analysis expertise, which had become devalued by the advance of Italian based empirical criminology.
lawyer-politicians in the federal government had created a powerful federal justice that secured the power of central authorities in the provinces (Zimmerman 2007).  

The new position of code-writer-reformer from Cordoba had a strong political element, but also a strong political backing and implications. This new legal specialization presented itself as a refuge for political liberalism, threatened by the advance of fascism and authoritarianism in the 1930s. The struggle between liberalism and authoritarianism was very concrete in Argentina’s political system. Very soon the 1939 Cordoba Code was offered as a model to reform other provincial courts and the federal justice itself, which was then controlled by conservative politicians and legal scholars. Even if political factors, such as the military coup of 1943, prevented the new code from reaching the federal judicial administration, the synergy between anti-authoritarian politics and new criminal-law expertise both reinforced and defined the position of the activist scholar in criminal procedure in the years to come.

The “science of criminal procedure” became a new branch in law schools, a specialty that demanded a very peculiar combination of skills, possibilities, and conditions. It combined political philosophy, empirical knowledge of comparative law, foreign languages, systematizing dogmatic skills, and rudimentary legislative skills. It mixed grand principles with a pragmatic orientation towards adapting the code and legal principles to changing political conditions. As self-appointed guardians and carriers of legal liberal modernism, these scholars offered their liberating tools as “authors” of new codes for governments of different political orientations—from Peronist administrations in the 1950s, to radical governments in the early 1960s, all the way to corporatist military regimes in the late 1960s. This tendency to serve different political masters also defined the position. The power and prestige of “authors” of criminal procedure code within the legal academy depended as much on their scientific capital and recognition of academic peers as on their capacity to turn their designs into actual laws and working crime courts. And, turning their designs into real administrative practice provided not only greater academic prestige, but also access to positions in the judicial bureaucracy itself.

Selling their legal souls to different political masters, the authors were able to capitalize on their services to buttress their judicial, and academic careers. After drafting the code in 1937, Velez Mariconde became Appellate Court Judge in Cordoba in 1939 and assistant professor at the university soon after. From there he launched his 1943 campaign at the federal level. Despite having been defeated in the federal justice system, he continued authoring codes for the Provinces of Santiago del Estero (1941), Mendoza (1952), Corrientes (1966), and Córdoba (1968). With the return of the Radical Party to the national government in 1958, he attempted a second advance on the Federal criminal Justice in 1960. After being defeated once more, he did not hesitate to write a new code

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6 In 1888 the scholar at the University of Buenos Aires had written an inquisitorial system, copied from old Spanish codes which mandated a secret investigation in the hands of all-powerful judges.
7 Velez Mariconde and Soler argued that inquisitorial codes in place in the 1930s “result from the inertia of practice” and the lack of “doctrinarian critique, comparative legislation, and the will make [liberal] constitutional precepts real.” (Gobierno de Córdoba 1937:21)
8 Sabattini, the liberal governor of Cordoba who petitioned the code to Soler and Velez Mariconde, promoted the criminal courts reform to distinguish himself against the authoritarian and conservative federal politics of the epoch.
9 After the code was passed, the Cordoba law school created the criminal procedure chair, where future specialists in criminal procedure were to be trained.
for Cordoba, under the national military government of Onganía. President General Onganía’s delegate in Córdoba requested a code that gave the government “jurisdictional energy,” and requested “a simpler procedure.” (Velez Mariconde 1968) Velez Mariconde, “sharing these directives from the beginning” wrote the code, not only to “give more energy to the legal instrument, but to neutralize the arguments of those who oppose oral hearings and to regain the vanguard position in the legislative movement that in this matter can be observed in the country since our province gave that first step toward institutional progress” (Velez Mariconde 1968:7, emphasis added).

That vanguard position of code-writer reformer was being disputed since the mid-1950 by scholars at the Buenos Aires Law School and scholars from the Cordoba Law School. Between the 1950s and 1980s Ricardo Levene (Jr.) from Buenos Aires and Julio Maier from Córdoba disputed the inheritance to the position of code-writer-reformer. Both specialized very early on to become recognized “procesalistas” (specialists in criminal procedure), the sub-discipline that became institutionalized in most law schools as separate from criminal law and from civil procedure law. In claiming the inheritance of that position, they sported different quantities and combinations of academic and political capitals. While both continued to base their local power on international contacts and alliances with political figures, Levene invested more heavily in political contacts, while Maier privileged acquiring both local and international academic capital.

Ricardo Levene (Jr.) (1914-2004), was the son of a legal historian. After flirting with positivist criminology and eugenics in his twenties, he declared himself a follower of Velez Mariconde (Levene 1945), and took the Cordoba doctrines to the Buenos Aires Law School. His investment in studying the Cordoba doctrines were part of a reproductive strategy in social space within the juridical field and as such, he gave to the Cordoba code a much more conservative reading which was reflected in his preference for strong judicial authorities. In Buenos Aires he offered his legal know-how to General Peron after he became president in 1945. With the backing of Peron, starting in 1946, he followed also a typical internationalizing strategy, contacting Italian and Spanish authors, 10 precociously authoring criminal procedure codes for the former national territories that were to become provinces under Peron (such as La Pampa and Chaco). In 1950, at the height of Peron’s government, Levene proposed reforming the federal criminal justice system (Revista de Derecho Procesal, 1949). 11 Peron, as we know, did not invest much in reinforcing or modernizing justice. He preferred reinforcing the police and the prison administrations—as we saw in the last chapter and will see in the coming one. When Peron was removed from power, Professor Levene lost his professorship at UBA Law School and his judgeship in the federal justice, eventually taking refuge in a new private law school in 1960 as a criminal law professor. When Peron came back to power in 1974, Levene returned to the federal justice system, becoming none less than

10 By imposition of Peron himself, he got to coauthor a treatise on criminal procedure at the age of 31 with Spanish exile and liberal and republican scholar Niceto Alcalá y Zamora in 1945. In 1949, after traveling to Italy, he invited legal procedure scholar, Pietro Calamandrei to Argentina to the Second National Congress of Criminal Procedure in Salta.

11 Levene wasn’t the only one attempting to sell a new code to Peron. Senator Julio Herrera wrote and published a detailed project to overhaul the federal justice (Herrera 1948) not just the criminal procedure. This proposal was published just after the Senate, controlled by Peron, removed four out of five Supreme Courts justices and the Attorney General following in 1947.
Supreme Court Justice. From his position, he again tried to get Congress to reform the federal justice code in 1975 implementing a mixed code, where judges would control investigation and accusations but incorporating oral hearings. The military coup of 1976, as in 1955, again, interrupted his plans.

While Levene was shuttling between the academy and the federal justice system in the 1960s and 1970s, Julio Maier, from Córdoba, became the most recognized heir of Velez Mariconde, renovating the position of criminal procedure code reformer through a second importation of German legal doctrine, and giving it a much more liberally oriented and activist orientation. His ascending social trajectory and his condition of newcomer to the juridical field led him to adopt a more liberal stance in the reactivation of this position of code-write reformer. Coming from a very humble background and also lacking in family connections within Córdoba’s legal world, Maier, after passing through a military high school, he entered to law school and invested in a discretely politically charged legal discipline becoming a disciple of Velez Mariconde. He obtained a fellowship to study in Germany in 1965, arriving there just after the “little penal procedure reform” of 1964 had been put in place in Germany. The German ordinance captured 20 years of struggle of legal scholars in Germany against the Nazi contents of the German legislation, and gave a lot of power to the defendant (and his attorney) against the state (Mueller 1966:345). Upon his return to Argentina, he clerked at the Federal Justice in Buenos Aires and became a professor at the Buenos Aires University Law School, where he met Soler, who shared with a similar social trajectory. While clerking, he engaged in a massive operation of legal comparison and translation, just as his elders had done in Córdoba, and wrote a dissertation comparing the Cordoba Province and Federal criminal procedure codes with the German Criminal Procedure Ordinance of 1964. With the return of democracy in 1973, he became a criminal judge. A right-wing paramilitary group close to Police Deputy Chief Villar, put a bomb in his house in 1976 for protecting Chilean dissidents escaping Pinochet—including legal scholar Juan Bustos, (and whom we will soon meet in the Chilean section). Soon after, he received the prestigious Von Humbolt Fellowship, and again in Germany he put all his energy into revitalizing the movement for criminal procedure reform, not just to “create a more complete theory of justice,” as he declared in the preface to his dissertation (Maier 1974:5), but also to protect the rights of his fellow citizens in his home country.

By the early 1970s the two generations of Cordoba code-writing activist-scholars had transcended the Argentine frontiers. In 1970, the Iberian American Institute of Criminal Procedure requested that Velez Mariconde “elaborate the political bases of a model criminal procedure code” for Latin America (Fairén Guillen 1985:98). In 1978, Julio Maier assisted Jorge Clariá Olmedo, a close collaborator of Velez Mariconde, in publishing the “Political Bases.” This publication was not only the regional projection of

12 In his dissertation, he calls for the “institutionalization of national institutes of comparative law”, but not to get to justice in an abstract, order to work out a “general theory of law based on material juridical values and not general philosophical presuppositions” (Maier 1974). As “a humble contribution to the criminal procedure reform movement in Argentina” (1974: 113) he translated the German ordinance.

13 The Iberian American Institute of Criminal Procedure was created by another exile of the Spanish Civil War, Niceto Alcalá y Zamorra in the 1950s. Alcalá y Zamora became an early admirer of the Córdoba criminal procedure school, interested in advancing its liberal tenets to fight against Franco in Spain. As a follower of the Cordoba School he also contributed to the Latin American diffusion of the Cordoba code and to the consecration of Maier, not Levene, as heir of Velez Mariconde (Alcalá y Zamora 1972).
the Cordoba school, but also a political act, sponsored by the Organization of American States (Claria Olmedo 1978) and published in Buenos Aires.\textsuperscript{14} In 1972, Velez Mariconde and Claria Olmedo wrote a new criminal procedure code for Costa Rica, which had an impact on all of Central America in the decades to come.

However, the regional projection of the Cordoba Code, and the proliferation of its conservative and liberal followers, did not translate into power at home. In the late 1970s, both Levene and Maier were ostracized from the academy and the federal justice system. Levene was expelled from the administration by the 1976 coup, while Maier survived the purge first going abroad, and then by playing it quiet during the dictatorship as a judge and professor at UBA. Their situations were not unusual for state reformers in Argentina, who had been chronically expelled from the Argentine “archaic state” (Dezalay and Garth: 1998a) controlled by volatile political forces. The federal state’s justice sector held no exception to this pattern.

3.3.2. Federal Judiciary and criminal courts: from a coherent instrument of Buenos Aires’ hegemony to political subordination and neutralization

The Criminal Courts and the justice bureaucracy in place in 1983, at the moment of transition, was a highly permeable and weak judiciary. This had not always been the case. The federal criminal courts and tribunals, created after the 1853 liberal Constitution and expanded through the national territory, acquired organizational integrity and prestige between the 1860s and the 1930s (Zimmerman 2007).

However, beginning in the 1930s, after the military coup, the federal judiciary progressively lost much of its legitimacy and internal coherence, configuring what Dezalay and Garth (1998a:6) have called an “archaic state” controlled by clientelism, patronage, and personal relations”(1998a:2). As in the case of the federal police, the 1930s and 1940s military coups also marked the beginning of bureaucratic decay produced by increased and systematic interference of the executive branch, military or civilian, on the federal judiciary. This decay was also reflected in the decrease in the budget share of the federal judiciary within the federal government budget (see figure 3.3).

\textsuperscript{14} The Cordoba activist reformers transcended the frontiers very early on. Already in the early 1960s scholars from Chile were peregrinating to Cordoba to study criminal procedure after visiting the traditional centers of criminal law training, Italy, Spain, France and, for the fewer, Germany (see section 3.4.2). In 1972 Velez Mariconde and Claria Olmedo wrote an new criminal procedure code for Costa Rica, which had an impact on all Central America in the decades to come.
The executive branch interfered by demanding decisions, deciding appointment and careers, and overstepping its jurisdiction over investigative and adjudicatory functions, putting them in the hands of police commissions or special courts. In the 1930s, the Executive, in the hands of the military, obtained the confirmation of de facto legislation. A decade later, they began removing those who had made the decisions, the judges themselves. After 1943, it began interfering with career trajectories. This instability continued during Peron’s presidency. In 1947, elected president Peron removed all Supreme Courts justices through political trials, and after the 1949 Constitutional reform, he “purged” the whole Federal Justice system, “inoculating [it] with personal followers” (Orgaz 1961:124). The practice of removal continued under elected president Frondizi in 1958. Even if he filled the higher judicial positions with “liberals” from Córdoba such as Soler—who became General Prosecutor or judges like Arturo Orgaz—he harassed criminal court judges who dared investigate illegal gains made by Peron and his followers, accusing them of political persecution, and requiring new confirmation for judges. The 1966 military coup, as expected, also removed Supreme Court justices. By the 1960s, the Supreme Court was so subordinated to other powers that the author of a sociological study of Argentina’s power elites in the mid-60s explicitly excluded the “Judiciary and the Supreme Courts” on the grounds that he only “studied groups within the country that have autonomous powers” (Imaz 1965:6).

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15 According to former Supreme Courts Justice Arturo Orgaz traditionally “designations were made with particular consideration of party affiliations, to give a position to senators or representatives who finished their terms in office, or to transfer to justice—in particular in the common and federal criminal courts—loyal employees to the government, that can serve good services to please elected party comrades or those recommended by them” (Orgaz 1961:126). However, until the 1940s this “allowed for the development of some independence, as each government found the incumbents in place and was difficult to remove them.” The 1943 coup put an end to such policy and began with the practice of removing the Supreme Court members.

16 This submissive courts, accordingly, gave carte blanche to Peron’s policies of reinforcing the police bureaucracy by giving them legal privileges to fight and control political opponents, and instituting a “State of Internal War” (Cesano 2011a) Peron also advanced over provincial justice systems, in particular those that presented some independence, and where the Law faculties and legal profession were more powerful. He intervened the Cordoba judiciary in 1946, 1949 and 1954 and the Buenos Aires one between 1952 to 1955 (Orgaz, 1961:127).
A partial exception to this subordination was the Appellate Criminal Court of the Capital. As we will see in the next chapter, the judges and personnel of the Appellate Courts were imbued with positivist criminology, and had strong ties with the prison administration and with custody institutions for juveniles, as well as with after-care centers, and had a decisive role in criminal policies (RPP, 1962). However, this subsector of the judiciary represented a minority within the federal criminal justice administration, which continued to be highly permeable to political changes, not objecting to the advance of the military over criminal courts jurisdiction.

As the Supreme Court lost political power and any trace of autonomous bureaucratic authority, the military advanced their jurisdictional power over judicial matters, installing military courts and creating special courts in charge of investigating and adjudicating in cases of political crimes. In 1960, Frondizi set up military courts as part of his Plan of Internal Commotion (Plan CONINTES) that tried those accused of political crimes. Military courts also took over common criminal courts during the bureaucratic-authoritarian regime of Onganía, in particular after the 1969 urban uprising of students and unions in major cities across the country. That same year the government created War Councils (Act 18.234) and in the next year it created “Special Courts” (Act 18.670) that infringed upon federal judicial jurisdictions. In May 1971, General Lanusse, with Act 19.053, created the National Criminal Court (Cámara Nacional Penal), which specialized in “anti-subversive actions,” thereby infringing upon the jurisdiction of federal (and provincial) criminal courts. That same year, crime judges lost the power “to investigate crimes of subversion during the state of siege” to the military, and in 1972, Act 19.539 allowed the Executive to present charges against defendants and gave the police the right to direct investigations and decide on pre-trial detentions. Around the same period, criminal courts lost control over prisons, which came under military control.18

The new democratic government of 1973 did not invest in recovering the prestige or power of ordinary criminal courts, or of the federal justice in general. Demonstrations in Buenos Aires and Cordoba pressured the executive branch to grant amnesty to those accused of political crime by these police commissions and sentenced by these “Anti-Subversive Courts” (Tcath 2003, 60). The government issued a general amnesty in 24 hs., further de-legitimating the judiciary by freeing political prisoners and common prisoners. When Peron returned to power in September of 1973, he called for the “return to the constitutional and legal order, as the only warrant of freedom and justice” (Svampa 2007, 403). But, while the government attempted to limit right-wing violence and to channel political activity within institutional frames, it resorted to the police--and not the courts--to do so. Back in power, political parties filled the Federal Justice system according to

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17 The creation of these special courts follows the example of the special courts created in France since 1960 and 1963 to deal with the Algerian crisis. On the special military courts, see Mueller (1964).

18 According to a human rights report released in 1973, in these conditions the police engaged in systematic use of tortures to force confessions (Foro por los Derechos Humanos, 1973:143-219), which went unpunished by “the Special Courts and in the few cases where somebody is found guilty of torture, the government pardons him” (Foro 1973:124). In April, the Armed forces were put in charge of prisons and prison personnel became subject to military courts (Act 19594). Very efficiently, in November of 1972, through Law 19863 the government, put in place a “Maximun Security Prisons.”
political quotas. Aided by the Radical Party Maier became a judge, while Levene, with even greater political contacts, became Supreme Court Justice.  

The military government that began in 1976 brought a further weakening of the courts, the Supreme Courts, and ordinary criminal courts. The 1976 Junta removed all Supreme Court members, the General Prosecutor, provincial supreme court members, and put inferior court judges “under conditional tenure” (“en commission”), which meant they could be discharged at any moment. Those who kept their posts had to swear loyalty to the objectives and regulations of the “National Reorganization Process” (Bergalli 1982a, 252). During this period, “Argentina reached the lower level of submission of the judicial magistrates to political power.” (Bergalli 1982: 253). The courts abdicated their own jurisdiction, declining writs of habeas corpus. Pereira, in his study of the justice system of Argentina during dictatorship, argues that during the last dictatorship, “the judiciary was not so much subordinated as made irrelevant.”(2003b, 42).

This irrelevance was especially salient in the criminal courts, in particular in cases involving political detainees. Beside the irrelevant criminal judiciary, the military justice system ballooned. In 1976, the armed forces recovered their power to investigate “subversive crimes” through Act 21,460, to interrogate suspects, and to order their pre-trial detention, just like a judge. But the military were not concerned with formal trials—of the approximately 8000 people who disappeared, fewer than 350 were put on trial (Pereira 2003). The military was more focused on detaining and incarcerating when not “disappearing” political detainees. The Executive, exercising de facto sentencing powers, “ordered the detention of around ten thousand citizens, many of them detained up to 8 to 10 years” (Vazquez 1985:221).

With this parallel military justice in full motion, military and civil justice coexisted through a systematic denial of writs of habeas corpus issued by ordinary judges. The latter rejected the writs, or they accepted explanations for detention based on reports of “dangerousness” by military and police agencies. From 8,325 writs of habeas corpus presented between 1976 and 1983 the ordinary justice accepted less than ten (Vazquez, 1985:54). The judges even lost their power to control prisons and prisoners and even parole. Prisoners were put under military control and Act 21,650 instituted a parole system whereby those in custody “Under Disposition of the Executive” had to report, not to judges and courts, but to police, military, or other custodial institutions. During the dictatorship, agents with juridical capital, like judges and lawyers, lost their “socially recognized capacity to imposed the correct order” (Bourdieu 1987:825) over those deemed to be political delinquents. Their judicial capital was appropriated by police and military officers.  

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19 While Peron designated judges, following political agreements including Maier and Levene, he sponsored police officers as Villar and ministers that organized paramilitary organizations—in particular the Triple AAA, that put bombs to political enemies or their protectors. Julio Maier’s residence was attacked with a bomb in 1975. From 8,325 writs of habeas corpus presented between 1976 and 1983 the ordinary justice accepted less than ten (Vazquez, 1985:54).

20 The weakening of justice and of the criminal courts permitted the military to advance its own doctrines of criminal procedure. By the late 1970s, the military had not only purged all law schools, but had also started producing their own legal doctrine, which included an alternative penal policy and an alternative criminal procedure doctrine. According to a treatise that summarized this policy, “the legal marginality in which subversion acts demands a particular legal way of dealing with it. In this context the purity of traditional legal discussions can not be demanded. [This new way consists in]: Maximum legal rigor, independence
The retreat of the activist-scholars into the academy and away from political circles and public discussion left the space open to a group of lawyers close to the business community; these lawyers briefly occupied the position of justice reformers. While criminal-court judges remained passive spectators of police and military abuse of citizens, the justice administration continued adjudicating private contracts. The rachitic civil law federal courts did not satisfy the needs of big enterprises and banks in the context of a liberalized financial market. Young lawyers from business firms began to demand greater administrative efficiency. These managerial reformers were also newcomers to the profession. The most important of them, Horacio Lynch, came from a traditional family of doctors, and studied in the recently created and private Universidad Catolica Argentina Law School in the mid-1960s. Privileging administrative reform and the training of judges and lawyers over the creation of new codes (Lynch 1976), he and other young lawyers close to business groups, created the think tank Foro de Estudios de Administración de Justicia (FORES) in 1976, and, with the help of the US embassy, soon built up their own international contacts.

Having described the emergence of the activist-scholar position, with its contending factions, and described the position of heteronomy and weakness of the Federal Justice administration up to the moment of transition, I turn now to the democratic period, where the activist reformers came out of their refuge in academia to make their comebacks. Not all of them succeeded in turning their designs and views into institutional judicial reality. Only the designs suitable to the interests of the new political class prevailed. This class, as we can see in Figure 3.3, enjoyed the dominant position within the subfield before transition, and continued to do so over the decades to come. Figure 3.3 shows that the criminal courts field was not very complex. The political pole of the field was controlled by the military, which was not interested in reinforcing courts. Those in the criminal courts were merely trying to survive. Those in the academy, in particular at the Universidad de Buenos Aires Law School, were in outright retreat, some even expelled from the academy, forced to advance their legal study in informal meetings and publications. The Córdoba Law tradition also continued to work out criminal procedure and to invest abroad in drafting a model criminal procedure code for Latin America.

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from classical law, a summary trial independent of its traditional features and a prison regime that conforms to the referred principles.” The author is careful to note that “[t]hese differences do not imply a violation of due process regarding detention, imprisonment and trial” (Dominguez 1980:459–460). In this respect the fight against subversion was not totally “a-juridical” as Novaro and Palermo (2003) sustain. It was subject to a legal substantive rationality consistent with military standards.

21 In 1978 they invited Mark Cannon, administrative assistant of the United States Chief Justice to Buenos Aires, introduce case load management analysis and organized national conference of law schools’ deans. After visiting the US and resorting to empirical studies they produced an ambitious plan to re-organize the federal justice administration aiming to secure political stability and legal security for foreign investments (FORES 1986). In it they introduced management issues, forcing ulterior reformers to address such issues.
Figure 3-4 Criminal courts field Argentina, circa 1980

Legal principles and juridical coherence    politico-economic concerns
3.3.3. The time of “activist reformers” and the political struggles around criminal courts

With the arrival of democracy, the question of justice became central to the political arena. This was not simply the case because of the salience of transitional justice issues regarding establishing the truth and criminal responsibility for state terrorism, but also because the new democratic era was framed as the return of the rule of law over the rule of (military) force. It is in this context that the idea of criminal procedure reform reappeared on the political agenda. The idea took hold very early on, even before the inauguration of democracy. In this section I explain this re-emergence and the tortuous route it took until it acquired its final shape as a program of reform. The emergence of the new program was parallel to the revival (and transformation) of the criminal-code writer position.

3.3.3.1. Enlisting liberal reformers to rebuild the justice of the new republic

When President Alfonsin inaugurated his presidency in December of 1983, criminal procedure reform figured very low on his list of priorities. His greatest concern was to deal with the “abuses” of state terrorism and to fight the military. But, as we saw in the last chapter, trying the Junta members was not just a matter of fighting political enemies in retreat--it was also part of a more ambitious plan to reinforce, or regenerate, a democratic republic. Rebuilding the state emphasizing the law was Alfonsin’s position-taking, differentiating himself from the beholders of military statist capital (the military) and from the beholder’s of extra-parliamentary political capital of trade union followers (the Peronist Party). Rebuilding justice was of his struggle in the political field, and the trials of the military junta and the rebirth of the legal reformist impulse were intimately connected.

Fulfilling campaign promises and following the advice of his advisors, President Alfonsin and the “philosophers” put all three military juntas, and some of their subordinates, on trial. The congress annulled the “self-amnesty law” that the military had passed and modified the military criminal procedure code, making federal criminal courts appellate courts of military courts. Criminal appellate courts acquired the right to summon, investigate, and punish the crimes committed by the juntas and their agents. The appellate courts applied the military criminal procedure, which mandated oral hearings. Between April and September of 1985, the citizens followed the spectacle of justice and learned of oral hearings through the media. The hearings revealed the atrocities and abuses of military and police forces and performed its role as a social and political degradation ceremony. The accused were sentenced to life in prison. The trial had an enormous political and cultural impact.  

Although most authors studying the Argentine case see it as such, the trials to the Junta were not the cause of the rebirth of criminal procedure reform. By the time trials

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22 Novaro (2009:145-152) argues that the trial “consecrated the respect of essential personal rights as the ethical base of the new political order, and provided a shared narrative about what took place during the Proceso, and established, without doubt, the commission of mass crimes.[It also] impeded the military power to recover any relevant political role in the future.” (2009:148)

23 It was not that “as a result of the apparent success that oral trials had, in 1987 a project oriented to modify the criminal procedure was presented. The so called “Maier” Project”(Smulovitz, 1994:1 and 17). It was neither as Helmke puts it (2007:82).that the project was presented to compensate for the debacle of Alfonsin’s human rights policy
began in 1985, Maier had already drafted a first version of the new criminal procedure law. According to the Under-secretary of Justice “The code was in [the government’s ] plans since 1984” (Interview Enrique Paixao, July 2010). The connection between the human rights policy and the court reforms lies not in the success of the trial, but in the network of legal scholars that were at the root of both processes.

In 1983, the “philosophers” Carlos Nino and Jaime Malamud, who knew Maier from UBA law school, asked Maier for ideas on how to “remake the administration of justice” (Interview Maier, August 2010). To Maier, this could mean only one thing: writing a new criminal procedure. After the trial, Alfonsin felt he had the political legitimacy to launch his older plan for remaking the justice system. Justice minister Ideler Tonelli, who held office beginning in February of 1986, called Maier, who had been working under the former minister, and told him that “they had to talk seriously, because the president wants to change the administration of justice” (Mirna Goranski 2005:992). Maier followed the traditional path for reforming a criminal procedure code, creating an informal commission. However, during the drafting and preparation of the code, the Undersecretary of Justice, Paixao, and Maier’s collaborator, Alberto Binder, created new apparatuses to tackle other issues besides code drafting, giving birth to the “integral approach” to criminal procedure reform, and to a renovation of the position of criminal code-writer reformer, I call the “activist-code writer”

Binder’s militancy and missionary dispositions, combined with the “systemic vision” that the Undersecretary Paixao encountered in the Justice Ministry, fueled the creation of the larger commission. Alberto Binder, younger than Maier, was also a newcomer to the legal profession, but contrary to Maier, had a long political trajectory of activism in Catholic leftist groups. He also had Catholic notions about fighting for justice as religiously meaningful.24 He liked philosophy and politics and specialized in criminal law and criminal procedure at UBA. He was part of the “catacombs university” of local lore, working with ostracized professors in the liberal legal journal Doctrina Penal. Although he began working with Maier in a private firm upon the return of democracy, he also felt that the new period brought opportunities for political activists.

At the time, Binder was closely following the aggiornamento of the Argentine left.25 Some leftist intellectuals, like Socialist Cultural Club members Juan Carlos Portantiero and Emilio de Ípola, even became advisors of Alfonsin. Based on a progressive reading of Gramsci, they converged with Nino’s liberal institutionalism, reinforcing the institutions of liberalism (Elizalde 2009). This encouraged those on the left to participate in institution-building. Binder introduced his Gramscian perspective and political dispositions into the criminal procedure reform position, which lead to a different set of practices of reform making, well beyond mere code writing. According to Binder:

24 Binder comes from a family of medical doctors, participated in the Christian Revolutionary Party during his youth in the early 70s and in student politics in the university. One of his brothers is “desaparecido” and he went into internal exile living in an indigenous community in the northern Chaco in the late 1970s (Interview, July May 2010).

25 Inspired in Gramsci and the recent military defeat, important groups within the left decided to follow the democratic path. In 1984 the Latin American Gramscians meeting in Morelia had concluded that “social transformations had to be done within democracy”. In Argentina the Club de Cultura Socialista (CCS), created in July 1984, and headed by Jose Aricó, who had returned from Mexico, followed this position.
Here were found ourselves facing a [judicial] organization with 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] Paixao 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 Alberto Binder, December 12th, 2009)

To wage his “war of position” within the criminal courts subfield, Binder created different teams to deal with the different fronts. These teams were specialized in police, prosecutors’ organization, court administrations, budget, architecture, and even, statistics. He also, as his seniors have done cultivated his own separate set of international contacts. The Undersecretary of Justice, Paixao, also wanted to create teams based on a law-and-economics system analysis perspective he found in the Justice Ministry (Interview with Paixao).26 As this war had financial costs and “there was no money from the common budget to do this kind of things” (Interview Enrique Paixao, Undersecretary of Justice, November 2009), in 1987 the team scored a loan from the World Bank for their justice reform project. They also approached the US government, visiting the State department, various administrative and judicial authorities, and other potential providers of court technology. While the Gramscian warriors produced their research, raised funds, and designed a whole new administration for the courts (Consejo para la Consolidación de la democracia 1989:275–315), the code was fervently discussed on the traditional legislative front, in the Justice commission of the House of Representatives. Legal scholars from Córdoba and from the Buenos Aires Legal School met with members of the legislature.

The commission became a very difficult battleground. For almost a year, between 1987 and 1988, the commission invited legal scholars, judges, Supreme Court members, and legislators of all parties to discuss the project. The lawmakers from both invited parties approved the code, reflecting the political agreement between the Alfonsin sector of the Radical Party and the “Renovación” (renovation) sector of the Peronist party.27 On the other hand, the older and competing criminal code reformers attacked it, reigniting the historical divisions within the academic legal sector. Cordobian legal scholar Jose Ignacio Caferatta Nores, another heir of Velez Mariconde, approved the code in general but objected to creating a jury. On the other hand, the conservative Levene rejected it for its inclusion of independent prosecutors and what he saw as passive judges. Meanwhile, Maier and the team deployed all their international academic contacts to organize an international conference where prestigious legal and socio-legal scholars of Europe and

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26 The full implementation of this new code was also a personal stake for Paixao, as a newcomer to the legal profession who had also studied criminal law and had had a long trajectory in the public prosecutor’s office, he experienced first-hand its lack of political power—and low salaries.

27 The Peronist Renovation was a new group of upcoming figures, in particular governor of distant provinces major of populous sector Buenos Aires and Senators, that disputed the hegemony of the party to the union leaders after the defeat of 1983 (Novaro, 2010:165-166).
the Americas professed their academic approval of the new code (Presidencia 1989:7). With such munificent international connections and credentials on display, the conference’s aim seemed to be to tout the almost universal value of the team’s work.

However, the squadrons of statisticians, architects, code writers, and financial analysts, armed with their extensive reports and the backing of the international legal academic community, and led by intellectual power of Maier and activist passion of Binder, could not advance beyond the legislative body. When the project got to the House of Representatives in mid-1989, it lacked political backing. By then Alfonsin had lost the legislative elections of late 1987, losing control of the Senate, and the Renovacion sectors of Peronist were divided. Governor Menem was presidential candidate and controlled the Peronist party. Reflecting this new balance of political power, the day on which the code was to be discussed in the lower house, “the representatives of the Peronist Party did not give quorum” (Camara de Diputados 1989:551). The leader of the Peronist lawmakers, close to Menem, orchestrated the defeat of the project in the lower chamber. The liberal and innovative project of Maier and Binder was defeated not because judges, lawyers, or the conservative sector of the local legal academy opposed it. In the highly politicized criminal courts field, the political capital needed was not there. The new balance of power in the political arena caused the defeat of the activist reformers.

3.3.3.2. Deploying peronist code-writers to continue the semi-autoritarian code

When Menem became president in 1989 he formed a political coalition with conservative peronist governors and the conservative liberal party Unión de Centro Democrático (UCD). As we know from the last chapter, his governing strategy was not based on institution-building, as was Alfonsin’s, but was instead focused on power-building, while selectively incorporated member of the old peronist party. Just as he took over the police, he also took control over the federal justice administration, replicating in the federal level his practices in the province of La Rioja, where he has been governor. This frontal attack on justice included curtailing the feeble autonomy that justice had accrued during the first democratic administration. During his first year in power, he took control of the Supreme Court by increasing its members (among the newly designated was veteran Ricardo Levene), removed the General Prosecutor, disarmed the investigate officers of the Central Bank and General Comptroller’s office, and took hold of the lower house and the Senate Justice Committees in charge of designating judges (Verbitsky 1993).

After obtaining the control of most sources of federal judicial autonomy during 1989 and 1990, Menem pushed for a new criminal procedure reform in early 1991, so as to rebuild the legitimacy of justice he had so systematically destroyed during his first year as president. This time, the criminal justice reform was going to be subject to the more

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28 Maier commended the congress not only for “the scientific excellence of [foreign] visitors, the meeting with Latin American colleagues” but also highlights that “foreigners observed that, it was the first time, that a country would offer its own political projects on penal issues to the critique of foreigners, exposing its doubts and listening to the evaluation of foreign experts.” (Presidencia 1989:11)

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immediate political needs of the all-powerful executive branch and its allied governors. He favored Levene’s model, which left judges in control of the judicial bureaucracy.

Following Menem’s orders, the new Justice Ministry Leon Carlos Arslanian—a highly prestigious former judge, close to the Peronist Party, but with an orientation to defy judicial hierarchies and tradition—did not resort to studies, simulations, statistics, or new experts. The executive, controlling the courts, the ministry of justice and both chambers swiftly passed the code. Arslanian suggested favoring Maier’s project, but the Executive responded that “that was a Radical [Party] code, and we have our own” (Arslanian, interview June 2010). Using his seat on the Supreme Court—because his academic authority was very limited, teaching in an small private university—he highly prestigious former judge, close to the Peronist Party, but with an orientation to defy judicial hierarchies and tradition—did not resort to studies, simulations, statistics, or new experts. The executive, controlling the courts, the ministry of justice and both chambers swiftly passed the code. Arslanian suggested favoring Maier’s project, but the Executive responded that “that was a Radical [Party] code, and we have our own” (Arslanian, interview June 2010). Using his seat on the Supreme Court—because his academic authority was very limited, teaching in an small private university—Justice Ricardo Levene used a near-identical version of his 1975 code to eagerly launch a third attempt to impose a mixed criminal procedure code in the federal justice with oral hearings, judge control, ample power for the police and dominate prosecutors. Senators had a strong preference for Levene’s code, which gave ample powers to the police and judges. According to the highly conservative provincial senators, among them the Senators of the northern provinces, like Santiago del Estero, this code also had the virtue of respecting national and folk traditions (or, in peronist slang, “the idiosyncrasies of the people [el pueblo]).

In the lower house, the Radical Party and Minister Arslanian himself, tried to modify the code. They introduced the following: the notion of plaintiff (as a result of lawyers’ pressures), a limit on the value of “spontaneous declaration” before the police, the voluntary delegation of investigation to prosecutors, probation, and the incorporation of judicial oversight over prison conditions and conditional freedom (thereby creating the figure of supervisory judge). With these changes in place, the lower house passed the new code in mid-1991. The following year, the legislative branch passed the new organization-of-courts bill (Act 24050).

29 Leon Carlos Arslanian, is the son of Armenian immigrant and a newcomer to the legal profession. After passing through the prestigious Colegio National of Buenos Aires, during his university student years in 1960s he built contacts with powerful labor law “Peronist” lawyers, in particular the Anzorreguy brothers, major power-brokers since the 1970s. At the same time he invested in stuying criminology in the early 1970s, and was part of the Federal Appellate Court that sentence the military junta. His academic and judicial credential gave him an enormous prestige within political and legal circles in the early 1990s.

30 In 1987 Levene asked his teaching assistants at the Universidad Kennedy Law School, to aid him in his responses to the Maier and Levene projects. One of his assistants, Julio Aparicio, remembers that Levene did not even had a secretary in 1987, while his “team” was formed mainly by his teaching assistants.

31 His new project gave investigatory attribution to the police, including the possibility of receiving “declarations” from suspects without judicial control (chapt. 176), and authorized police house searches with no warrant on the grounds of satisfying the demands of public order.”

32 The Senate informant presented Levene’s code as “coincident with the “authentic traditions, …avoiding being trapped by projects that don’t pertain to our idiosyncrasy, considering that this initiative follows the long and rich experience of our provinces….We are not creating a rational scheme foreign to our national tradition.” (Session; 2541) The Senator from northern Tucuman province argued that the code must be accepted because it has proven useful for 50 years, and that “it is not the result on an improvisation and a purely doctrinarian creation, but an elaborated product” (Sessions of 6.7.1989). The Senator from Catamarca praised Levene for being an “authentic follower of the 1930s Italian Code,” while Santiago del Estero Province, Senator Juarez, praised Levene as a legal “priest” following his conviction and sacrifice in the enterprise of breaking the dams of inquisition, but not going to the excess of […] the jury, which should be put in place only when the “people’s soul matures, only when the conscience to help justice and the police is present in the people’s soul (el alma del pueblo)”(2550).
This bill set aside administrative issues and abandoned Binder’s plan to reorganize the justice administration. Binder had designed a system where rotating judges would administrate the system with the aid of court managers, while prosecutors would be independent from judges, specializing in certain crimes (See Presidencia 1989). Instead, the bill merely created a General Criminal Appellate Court to revise criminal sentences. With jurisdiction over the whole national territory, the High Appellate Crime Court (Camara Nacional de Casación Penal) would guarantee impunity to the Executive branch for decades to come. It also added an important number of oral tribunals, lower courts, prosecutors, and public defenders, where Menem designated his acolytes.33

Political interests, especially of the executive branch, limited the reform. With the distribution of roles largely unaltered, change was limited to the introduction of oral hearing for sentencing. When hearings were used (which was seldom), they were based on the written dossier of information, which was itself under the control of judges and subordinate prosecutors. There has been no change in the criminal court administration either. The limited change carried out in the judicial arena evidences the two main tendencies of the political field in democratic Argentina described by Cavarozzi. On one hand, there is the tendency towards a weak party system, first seen in the demise of the UC and PJ dual-party system, and then in the decay of UCR and a turn toward a system centered in Peronism, with tendencies to anti-politics. On the other hand, there is the tendency towards the provincialization of politics, produced by the ascendancy of governors and political authorities over the federal center and over parties (Cavarozzi 2006:89). In the changes made to criminal procedure and the organization of justice, besides the immediate interests of the president, the reform reflects the power of senators and provincial governors. Many judges had been appointed upon the return of democracy. Later on, during Alfonsín’s presidency, the parties agreed that governors should nominate the judges and the Radical Party should nominate the prosecutors. Once the UCR lost the executive branch in 1989, such balance disappeared (Verbistky, 1993:127). Because the powerful judges were preserved, the judicial-political capital of senators and governors was left intact. The limited power of prosecutors also reflected the new properties of the political field, where an overly powerful prosecutor controlled by the national executive would have presented a threat to governors. At the same time, an overly powerful and autonomous prosecutor would have jeopardized the control of the executive and governors over judges.

In one of the last comebacks of the Radical Party, in 1993 and 1994, Alfonsin and the Radical Party obtained the constitutional recognition of the public prosecutor’s office as a power independent from the executive and legislative branches. This general prosecutorial role was organized in a decentralized way, mirroring the structure of courts (Act 24946). As a decentralized organ, the prosecutor had only a weak central initiative and was unable to pursue centralized prosecuting policies. In practice, prosecutors investigated the simplest cases. In 1997, the House of representatives introduced plea-bargaining (Juicio Abreviado), where defendants could confess their crime and accept a

33 These new judges and prosecutors are now called the “Menem-addicts,” forming a new recognizable group within the Federal Justice, along the “conservatives,” rich in family connections, and the “progressives,” richer in cultural capital and who entered to justice through contacts in the academy (Sarrabayrouse 1998:20).
sentence of less than six years (Act. 24.826) The system remained fed by the police, who controlled most investigations, leading to enormous police discretion and abuses (L. Eilbaum 2009). Police control was also responsible for sentencing inefficiency, in that the number of pre-trial detainees in federal prison did not reduce, remaining around 60%.

The defeat of Mair and Binder’s project, however, forced them to invest outside the state, planting the seeds for the continuation of their reformist crusade in Chile.
Figure 3-5 Criminal courts field Argentina 1998 (after reform)

Bold: new agents
3.3.4. The retrenchment of the liberal scholars: out of the state and out to the world

After Alfonsin left government in mid-1989, the reform teams led by Binder in the Justice Ministry where expelled from the state. The liberal reformers, headed by both Maier and Binder, invested in the “gray area” outside of the state, repeating an old pattern described by Dezalay and Garth for experts that enter and put their energies in the Argentine state. In this case, they created INECIP (Instituto de Estudios en Ciencias Penales). INECIP was to follow the model of a German seminary, but Binder (younger, with still less recognition in the judicial field) gave it a different meaning and use:

The experience of the older people with political instability told us that it was good to have our own place, creating a study center following the model of German seminaries. But this got combined with the conscience of the younger among us that felt we had something new. We had a strong theoretical vocation, and felt we had a treasure to preserve, [we wanted] to keep alive this capacity to impact, [because] we felt we have had some impact. We had been defeated, but not that easily …we were powerful, and we felt it was necessary to create our own forts, our own trenches (fortines) where we could always retreat to. (Interview Binder, July 2010)

The strategy of INECIP was threefold. In terms of personnel, they preserved their technical teams, recruited a few younger lawyers and put them in important positions within the judiciary. Second, they used their international contacts to work abroad, selling and deploying their recently invented “complex multidimensional” approach. Third, they took the battle over legal procedural reform back to its original terrain: the provincial criminal courts (in particular, those of Argentina’s southern provinces). Here I concentrate on their exportation strategy, which would directly jump-start the Chilean reform effort, providing the Chilean reformers with theoretical grounding, international contacts, and legitimacy.

Through a tie to Edmundo Vazquez, the President of the Guatemalan Supreme Court, in 1989 Maier and Binder traveled to Guatemala, which was seeing the conclusion of its civil war. Upon their arrival, they started building the notion of their trademark “multidimensional strategy,” which combined code-writing with administrative design (following the model of what they did in Argentina) and consensus-building (which had not taken place in Argentina). There they encountered a Harvard law School team headed by Phillip Heynman who was running a small litigation-training program. Opposing the Harvard School method, Binder replicated his own “multidimensional” political approach. This approach helped Binder negotiate with the other big player in the criminal procedure policies, USAID and the US Department of State, who were crusading down from the north.

In their encounter in Guatemala, Binder and Maier met and clashed with the USAID officers and their grand and managerially based style, which was based on hefty contracts to private consultants. Binder’s approach was too cheap. 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.

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34 Among others, Mirna Goransky and Maximiliano Rusconi who went to work in the Prosecutors office.
And then we started negotiating. In those days we had the networks of scholars which USAID needed, in particular the younger ones, and we had the methodologies of how to proceed, and most important, we had the legitimacy” (Interview Binder, August 2010). USAID had been looking for a legal doctrine and perspective that would not appear foreign or imposed by the US. They felt this goal was important in order to promote their projects in Guatemala, which enjoyed not only the backing of the Supreme Court and legal scholars, but also that of Guatemalan right-wing parties. After writing the code and the proposal for organizing justice, 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 would build new networks with Chilean legal scholars before USAID could get there and build their own networks, thereby securing an advantage over USAID. By investing in Chile as early as 1993, Binder enhanced his regional recognition and was in a better position to negotiate with USAID over cases like Bolivia and Paraguay, where USAID officers could otherwise more easily impose their “technocratic” criteria (given the greater financial dependency of these particular countries). This tension between the USAID team and Binder would continue for decades, where the Argentine activist-scholars would favor grand transformations that advanced a new liberal code, and the USAID officers would emphasize a more “pragmatic” way that was less concerned with the purity of the “code” than with the efficiency of the system (i.e.:Hammergren 2007). USAID’s pragmatic approach required expansive evaluations, costly programming designs, and subsequent re-evaluations, all of which were provided by the big consultancy firms connected to USAID, such as CECCHI.

Maier and Binder’s participation in Chile would be essential. They would transmit their know-how and their legitimacy to the homegrown Chilean reformers, including the “consensus-making strategies” (which failed in Argentina, but worked very well in Guatemala and El Salvador). Maier, but in particular Binder, would have a very important role in Chile, where the new legal scholars and economist-reformers would rely on their prestige, experience, and assistance. That said, the Chilean “reform” would require much more than consensus-building among scholars before it became the poster-child of criminal procedure reforms in Latin America. I turn now to the complex sociogenesis of the “successful reform” that resulted in a new system with centralized administration and management, new judges, a gigantic prosecutorial administration, and a humble public defense.

3.4. Chile: legal and managerial reformers in a land of an autonomous but weak judiciary

Chilean Criminal procedure reform must also be traced back many decades, well before the return of democracy in 1990. I begin with the institutional trajectory of the autonomous if weak judiciary in Chile, and then reconstruct the emergence of the criminal procedure reformers, in the mid-1950s, tracing their evolution and multiple
trajectories in the 1970s. In this section I also describe the first incursion of economists into the business of criminal reform in the mid and late 1970s, during the dictatorship In the second subsection I turn to the more recent struggles that produced a united front against the judiciary, consisting of the new generation of criminal procedure reformers, the economists, and the government authorities. Together, and with the shared backing of the consensus oriented central government and parties, they finally subdued and transformed the judiciary in the late 1990s.

3.4.1. The genesis of the weak autonomous judiciary and of the criminal procedure and management reform activists

3.4.1.1. The political origins and development of an independent (but weak) judiciary

In the early 1990s, reformers and the government faced an ideologically cohesive, conservative, and disciplined judicial apparatus that retained internal control over recruitment and careers. The judiciary, just as was the case with the Carabineros, acquired their autonomy from politics during the critical juncture of the 1920s. With the transition from the oligarchic state to a developmental social state in the 1920 and 1930s (E. Fernandez 2003: ch. 4), the judicial bureaucracy was restructured and separated from politics. Beginning in the 1870s, the oligarchy and its conservative parties gave the Supreme Court ample power over recruitment and careers of judges and judicial personnel, though it heavily interfered with the designation of its members (Hilbink 2003:67), in particular after the 1891 civil war when 80% of its judges were removed. In the 1920s the new military elite and the Radical President Alessandri took the Supreme Court away from the control of the Senate and gave it administrative independence, the power of constitutional review for concrete cases, and the power of appointment and discipline over the lower courts35 (Hilbink 2010:59). This continued after the fall of Ibañez in 1931. However, independence from politics did not necessarily translate into a powerful judiciary. By contrast, it was a relatively weak judiciary that used its restricted powers to control the executive.

Throughout Allesandri’s second and highly-authoritarian term (1932-38), and throughout the Popular front period (1938-1952), parties and government chose a “conscious marginalization of the judiciary from politics” (Hugo Fruhling 1980:3), both political and bureaucratic. The court remained apolitical, avoiding opposition to the executive branch. Resting on the doctrine of the separation of powers, the courts did not protest any of the initiatives that attacked individual rights (Hilbink 2007), such as the prohibitions against communist activities mandated by the 1948 “Law for the Permanent Defense of Democracy.” The court also did not attempt to stop the “fragmentation of [judicial] jurisdiction” (Fruhling, 1980:11) that resulted from the creation of labor and administration courts (over which the Supreme Court initially had no jurisdiction) in the 1940 and 1950s. The labor courts, as well as administrative courts regarding duties, taxes,

35 According to the 1925 Constitution the Supreme Court would put forward a list of five candidates within which the president chose the members of the Court, and proposed the members of Appeal courts from a list of three. In 1927 the Supreme Court instituted in 1927 an evaluation system where employees where classified every three years according to the “efficiency, zeal and morality” (Helmke,2005:56-57).
public employees, were placed under the control of the Ministry of Social Welfare until 1955 (Fruhling 1980:11-12).

This political passivity vis-à-vis the executive branch was parallel to the Supreme Court’s control over discipline, decisions, and performance of lower-court judges. Between 1932 and 1970, judges enjoyed enormous stability in their careers (Fruhling 1980; Hilbink 2010). Stable careers and the rigid and systematic evaluations reinforced the traditional conservative outlook, or “a professional ideology that separated law and politics” (Hilbink 2010), but also politics and the market. According to Hilbink, the judicial corporation reinterpreted the division of power doctrine in such a way that “judges handled private law (property and contracts) and politicians public law (public order and morality)” (2010:37).

This politically autonomous judiciary grew administratively very weak, if compared to the growth of the Carabineros during the same period, in particular during the 1950s and 1960s—especially in terms of infrastructure, expediency, personnel, and resources. This weakness was even more evident in the criminal courts. According to historian Leon Leon (2003), criminal courts, as opposed to civil courts, had a public reputation as early as the late 1930s for being inadequate to the task of dealing with their large caseloads, especially given their strict “legalist conception” (2003:269). In the 1950s, the criminal courts continued to be chronically understaffed, and “deteriorated, filthy, giving justice a vulgar appearance instead of the solemnity that it should have enjoyed” (2003:270). While Carabineros and the Investigative Police reinforced their bureaucratic authority and capacity between the 1940 and 1960s, courts remained unable to improve their lot, increase their resources, or their personnel. The historian of criminal justice Leon Leon summarizes the period between 1910 and 1965 as one where:

criminal justice was discredited and had a bad reputation […] the small reforms to the penal code [were] insufficient […] because it was unthinkable that processes and sentences could become more agile through a simple law that did not consider budgetary aspects. That explains the lack of judges in many courts, the deficient infrastructure and the scarce administrative personnel, which made cases take years to get to a sentence, many remaining without sanction. That is to say, that despite a constant concern of citizens and authorities [the country] lack[ed] a national policy that would stop the crime problem as well as economic deficiencies that affect[ed] institutions in charge of preventing and repressing crime.” (Leon Leon 2003:273)

This progressive loss of resources during the 1940s, 1950s and 1960s, can be also observed in the evolution of the judicial branch share in the national budget.
The subordinate position of courts in relation to the executive (and its agencies) within the penal arena also reflected the political elite’s lack of interest in investing in the judiciary at large. Dezalay and Garth (1998) argue that even if the Judiciary and the law school were initially embedded in networks that secured peace and order within the post-1930s developmental state and the reproduction of economic and political elites, the law began to lose centrality in the 1950s. Elites followed alternative institutional avenues to reproduce themselves, instead investing in social sciences, particularly sociology or economics. By the 1960s, the powerful families in Chile did not invest in the law, so that it increasingly began to appear to be an “obsolete technology of power” (1998:41). And, just as the elite abandoned the courts, the subordinated institution was left open to newcomers.

3.4.1.2. The (late) emergence of “code-writer-reformers:” regional international strategies and radicalization under Allende

Critical and alternative approaches to justice, and in particular to criminal law and criminal justice, arose in the temporally dominated sector of the juridical and judicial field in the 1940s, and was made possible by the marginalization of the law as a site of elite reproduction. While the top eschelons of the judiciary remained highly conservative and docile, in the margins of the juridical field, and in particular in the academic sector abandoned by the elites, a more politically critical collective began to take shape. As traditional elites left the law schools, other agents, with less cultural and traditional family capital, began to occupy these vacated positions in the juridical field. The newcomers captured these traditional professorial activities, putting them to new political uses. As in Argentina, these newcomers to the legal profession gained control over the traditional law school as well as courts. They also renewed the role of legal scholars, introducing new theories and approaches, and advancing new relations between the legal academy and the state. These changes are at the root of the first round of attempts to reform the criminal procedure, in the 1960s—three decades prior to the most recent round of reforms.

Between 1930 and 1960 the academic study of criminal law and criminal procedure law became a terrain disputed between the retreating oligarchy and middle-
class newcomers. This struggle planted the seeds for what later became known as the New Penal Dogmatic School in Chile, which began to take shape in the late 1950s and early 1960s. Back in the 1940s, network-deprived newcomers to the law school at the Universidad de Chile—the most prestigious law school—invested heavily in the most scholarly sub-disciplines, criminal law and criminal procedure. Students from Jewish backgrounds (e.g., Miguel Schweitzer, the Drapkin brothers, Alvaro Bunster) and middle-class catholic students (e.g., Eduardo Novoa Monreal) began mounting a challenge to the control of the criminal law chair, which traditionally went to professors steeped in the neokantian German, doctrine provided here also by Luis Jimenez de Asua—the exile of the Spanish Civil war that befriended Soler. Just as Soler fought criminological positivists in Córdoba espousing neo-Kantian legal theory, in Chile these scholars carved out a space alongside the positivist criminologists that controlled the Criminal Law Chair at the Universidad de Chile and its Seminary on Criminal Law and Forensic Medicine (which had taken root in the prison administration and had made important inroads in the Law School, by the mid-1940, as we will see in the next chapter). By the mid-1940s the new dogmatists were able to partially displace positivists at the University of Chile Law School, as well as at the Revista de Ciencias Penales, the organ of the recently created Institute of Penal Sciences (Matus, 2008:61). This generation, as their Argenitna counterparts, also invested in international network-building and study.

These early “autodidact” scholars trained the next generation of scholars who were also newcomers to the legal profession, but who obtained academic credentials abroad and went on academic grand-tours. In the 1960s this younger generation of scholars, later on called the “New Penal Dogmatic” (NPD, hereinafter), 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. This generation built their international networks by travelling. Indeed, Juan Bustos Ramirez studied criminal law in Spain in 1961, then received a PhD in Law in Germany in 1965. Francisco Grisolia specialized in criminal procedure, engaging in both the “intensive study of comparative law” as well as studying the “practical functioning of those institutions abroad” (Grisolia 1963: 150). On a state fellowship, he visited France and Spain, but also Córdoba, Argentina. With the products of Grisolia’s “grand-tour” the Department of Criminal Law planned its initial advance over the judiciary. In 1963 its director assumed that with “two years of full-time and

36 This position has been shared by members of the oligarchy (Cousiño Mciver), but also from newcomers since the 1930: the Miguel and Daniel Schweitzer brothers, Abraham Drapkin, Eduardo Novoa, or Alvaro Bunster.
37 Alvaro Bunster engaged in a very international strategy—after traveling to Brazil in the 1930s he visited Europe in 1950-51 in Rome, a center of liberal dogmatic penal theory since at least the 1910s and 1966, within a Chile-California agreement, he studied at the University of California, Berkeley (Matus, 2008: 66).
38 Francisco Grisolia was a Spanish (Catalan) immigrant, just like Sebastian Soler and Jimenez de Asua. He arrived to Chile in the Winnipeg—a vapor organized by Pablo Neruda bringing Spanish refugees from the Civil War. Sergio Politoff was the son of an immigrant from Bielorussia (Guzmán Dalbora 2011).
39 Even those who didn’t travel abroad adopted an international stance. In 1971 Francisco Hoyos professor of procedural law at the Universidad de Chile, presented each class giving the date and location, i.e. Santiago de Chile, May Xth, 1971, marking with that that “this same class could have been taking place in Bologna or Madrid that same day” (Interview, Orlando Poblete).
disciplined dedication” in 1965, the “Institute was going to be able to present a project that would be the basis of a draft to be discussed in parliament” (Grisolía 1963). By the late 1960s, the members of the NDP, including Eduardo Novoa Monreal, Juan Bustos Ramirez, and Francisco Grisolia, had created and embodied the new position of reformer code-writer, occupying it with more or less radicalized dispositions toward change.

The institute drafted the code and Francisco Grisolía and Juan Bustos Ramirez became members of a state commission on criminal procedure reform, where they shared the work with judges and government officers. Their initial reform program favored a division of labor between prosecutors and judges, where prosecutors investigated and judges sentenced, but it was defeated within the commission. The commission, also formed by judges, proposed a “mixed” code, where judges investigated and accused (Bergalli 2008), similar to the Cordobian 1928 code. The Supreme Court backed this more conservative reform proposal (Ortuzar 1989:12). The House of Representatives approved the project in the late 1969 and the Senate was about to discuss it when Allende became president in 1970 and removed the project from congress. As the Supreme Court became even more closed under Allende, the (ascending) new criminal law and criminal procedure reformers re-channeled their political energy into even more radical alternatives of legal institutions, including peoples’ courts.

The NPD scholars became part of Allende’s administration. From their various political positions they were able to propose even more radical innovations to justice, in line with the Unidad Popular democratic path to socialism. Sociologists joined them in their critique of bourgeois justice. In the late 1960s and early 1970s, the criminal law scholars and sociologists attacked the conservative ideology and workings of the courts. The convergence of sociological critique and radicalized NDP agents government critique pushed the Unidad Popular to propose to put some judicial functions into the hands of the people. The two most important proposals were to change the Supreme Court to reflect the will of a new organ called the People’s Assembly, and to set up neighborhood courts (NCs) (Frughling, 1980). Juan Bustos Ramirez (with Sergio Politoff) collaborated in drafting the NCs Law. After it failed to implement any of these

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40 The reform also proposed changes to the rules of evidence, from pre-determined values for evidence to the “free conviction” of the judges, introduced summary procedures and even plea-bargain for petty crimes.

41 Eduardo Novoa Monreal became legal advisor to Allende, Juan Bustos Ramirez worked in the Interior Ministry, while he became director of the “Department of Penal Sciences and Criminology,” at the University of Chile. Sergio Politoff worked in politically delicate cases—such as the investigation of the killing of General Schnieder—and Grisolia got a position in the Social Security administration.

42 Criminal law scholar Eduardo Novoa Monreal argues that the courts are an obstacle to progress given its conservative application and interpretation of the law (S. Correa Sutil et al. 2001:283). Norbert Lechner, argued that the judiciary was politically oriented to preserve class power and that that “the people should participate in the administration of justice to transform it”.

43 The neighborhood Courts had three lay members, one designated by the central government and the other two elected by the community, formed NCs. These courts had jurisdiction over a great number of issues: small rents and labor disputes, and a long list of misdemeanors. Reflecting the recent studies in criminal procedure the NCs was oral, public, free, with freedom of proofs and decision based on the judges conscience. They imposed fines and sanctions were oriented to collective re-education and implement UP policies (see PROJECT 1971) The Popular Assembly and neighborhood courts were never officially legislated, but some NCs actually operated (Cofré Schmeisser 2007). The NCs based their authority in radical organizations but also in the illegitimacy of judicial courts in Chile.
programs, the government created a 1971 criminal procedure reform commission involving Grisolía (Guzmán Dalbora 2011:482). However, this very innovative project never advanced beyond the commission, as the feud between the Supreme Court and Allende made it impossible.

In May of 1973, the Supreme Court openly questioned the executive branch, declaring in a letter to the President “an urgent and imminent breakdown of law and order in the country” (Hilbink, 2010:86). Three months later, on September 11, 1973, the military coup took power. The military and police commanders promised the Supreme Court to respect it as a state power and to restore law and order in the country, whatever it might take.

3.4.1.3. Increased judicial corporatism, the emergence of management experts and the rearmament of the liberal criminal law scholars

During the seventeen years of dictatorship, the Supreme Court preserved its subordinated position within the bureaucratic field, allied to the politically repressive programs of the government. During this period, the old criminal law reformers became internally divided. Some remained in the University of Chile law school and the justice administration. The more radical reformers went into external or internal exile, where they rearmed themselves with the new language of critical criminology and human rights. The military coup dispersed them away from the judicial field, where they would progressively return. The retreat of the legal scholars left the door of the criminal-courts field open to the economists who, even if unable to produce any change in the courts during dictatorship, were able to lay their own claim to expertise for criminal justice policies.

During the dictatorship, the Supreme Court did increase its budget (see figure 3.6), but did not recover its prestige and authority, instead continuing its decades-long spiral of functional decay while becoming increasingly closed, nepotistic, and rigid. As a political ally of the president, it gained some political power, in particular after the passing of the 1980s Constitution. The military junta promised to “guarantee the full effectiveness of the judiciary’s attributes, and to respect the Constitution and the laws of the Republic insofar as the country’s present situation permit” (Decree Law # 1 in Fruhling 1982). As long as the executive branch showed signs of formal respect, the judiciary accepted the states of exception declared by the Junta, the growth of military courts, and the systematic abuse of the rights of citizens in general and of political detainees in particular. After the coup, the military justice bureaucracy expanded its jurisdiction to try “subversives” by “Wartime” and “Peacetime” military courts. Of the 60,000 detained for political reasons, 6,000 were tried by military courts (Pereira 2003b:37).

44 This was the result of the recent questioning of judicial impartiality by the scholars now in government, the increasing politicization of its decisions privileging private property over protecting civil rights (see Hilbink, 2010:75-101), as well as the incapacity of the courts to protect private property in the face of executive branch orders to suspend judicial evictions.

45 Military personnel integrated these courts, which depended from regional military commanders and used summary procedures (Pereira 2003b:37). The procedure mandated investigatory and adjudicatory phases and gave defendants minimal possibilities of defense (see RC 1973, Nov:1-11).
The civil courts did not exercise their constitutional right to review the decisions of the military courts, even after the military courts started using peacetime procedures in 1978. During the 1980s the judiciary lost control over its own budget, and personnel started to become increasingly controlled by the military, both personally and ideologically. By 1989, 75% of the personnel has been renewed. This subordination to military officers reinforced the conservative ideology protecting state prerogatives over citizens’ rights. Its alliance with the military, however, provided the Supreme Courts with some political power. While the 1980s constitution denied the Courts review powers over military courts in cases of terrorism, it gave them some perks, including a position on the National Security Council, the right to designate two out of the seven Constitutional Court members, and veto power over judicial policies. The Court used this veto power to block the numerous attempts made during the dictatorship to change the criminal procedure.

The criminal procedure reforms attempts during dictatorship came from criminal procedure scholars who had remained in the law school and the judiciary, and later on, from economists who, working in the state, made their first incursions into the criminal courts field in the early 1980s. Paradoxical as it may seem, in 1974 the government formed a commission to draft a new criminal procedure code. The judiciary apparently took seriously the government promise to restore justice’s authority, and some judges and scholars, even if limited in the actions they could realistically take, started to work on a new criminal procedure reform proposal. Acting judges and politically conservative legal scholars controlled the commission, but the group also included Francisco Grisolía, the criminal procedure specialist from NDP (Ortuzar 1989:13). This commission closely followed the work of Velez Mariconde. Indeed, as the secretary of the commission put it, “the big inspiration was Velez Mariconde, absolutely; indeed, the big objective was to have our Cordoba code!” (Interview, Orlando Poblete, July 2009). The commission presented another proposal in 1976 and another in 1983, but in both cases the Supreme Court rejected them, objecting to the division between investigatory and adjudicatory judges, as well as to the creation of independent prosecutors (Ortuzar 1989:15).

While the legal scholars and judges drafted new codes of criminal procedure, economists used their access to public resources to build a new managerial approach to

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46 This is much more than the 350 that the Argentina military court tried, with around 30,000 political prisoners (see Pereyra 2003b:28). For descriptions of the “martial atmosphere,” and utter arbitrariness of these military courts see Constable and Valenzuela (1991:118-119).

47 According to Constable and Valenzuela “[b]etween 1973 and 1983 the Supreme Court rejected all but 10 of 5,400 habeas corpus petitions.” (1991:122). Pereira sees in the expansion of military courts a “radical deviation for previous traditions” (Pereira 2003b:38). I see instead a greater continuity, following the long-term path of “fragmentation of jurisdictional power” by Fruhling (1980:12)

48 A judge who retired in 1987 wrote in his memoirs that “the most important criteria for being named judge were ‘personal ties to a high-ranking military officer’ and ideological approval by the intelligence services.” (Constable and Valenzuela 1991:133)

49 According to chapter 81 of the 1980 Constitution the Supreme Courts had to be consulted about every policy initiative related to the Judicial branch.

50 From the seven members Ruben Galecio and Raquel Camposano were judges; Miguel Schwitzer. Jose Bernales and Waldo Ortuzar Latapiat were legal scholars. Schwitzer was a scholar and politician, Bernales was a conservative professor of criminal procedure at Universidad de Chile; and Ortuzar a politically conservative scholar from the Universidad Católica Law school. He has served as special antimonopoly prosecutor, since 1962. Here Supreme Courts member Israel Borquez was part of the initial commission.
judicial reform. It is well established that after the 1982 economic crisis, new economic groups and the Chicago-trained economists criticized the courts for failing to understand the new financial economy and the resulting new complexity of trials, considering them unfit institutions for a competitive economy.\footnote{1} However, less known is the fact that even before they attacked civil courts for the problems they posed to financial capital, the Chicago Boys had already targeted the criminal courts and the prison system. On December 1979, the government created an “Inter-ministerial Commission on the Situation of Prisons,” which was independent from the “Criminal Procedure Reform Commission” and was formed by the Ministry of Justice, the National Planning Office (ODEPLAN), the Finance Ministry and the Public Works Ministry. The Undersecretary of Justice, Francisco Folch, presided over it. Folch, a lawyer himself, came from the Edwards economic group, and ODEPLAN and the Finance Ministry, the “fortresses of the Chicago Boys” (Cavallo, Salazar, and Sepulveda 2008:559). After seven months of weekly meetings, they produced a 150-page report criminal justice system, covering the situation of the “Judicial-carceral system,” entitled “Final Report on the Carceral Situation” (Chile 1980).\footnote{2}

The report covered much more than prisons.\footnote{3} After demonstrating the enormous projected cost of prison populations into the future, it proposed reducing the use of pretrial detention to a minimum and shortening the length of trials. Indeed, the commission analyzed criminal procedure reform and “recognized their merits […] as a contribution to solving the judicial carceral system problems” (Chile 1980:134). They backed all changes that made the process shorter and simpler, including increasing public defense services to allow those with limited means to demand the advance of trials and “accelerate the procedure,” as well as “community alternatives to prison to reduce costs” (Chile 1980:4-5). The report incorporated progressive judicial policies into a new logic that combined efficacy in fighting (property) crime with cost-benefit concerns. During the 1980s they developed tools to “rationalize the administration of justice” (1980:106) and converted project evaluation techniques into standards for judicial policies. They produced “a project evaluation analysis” for computerizing justice in 1986 (See ODEPLAN-DIAPEP 1986),\footnote{4} and another for the adoption of public legal defense services in 1988 (ODEPLAN-DIAPEP 1988). By 1991, they had imported economic theories of crime from the US and constructed a formula that factored in private and public interventions against crime. Within this extensive formula,\footnote{5} the criminal courts

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\begin{enumerate}
\item Justice minister Monica Madariaga between 1977 and 1983, had was ordered to increase a “rational plan of growth, introduce computers, and train judges “on economic matters” (Correa Sutil et. al 2001: 291)
\item Following the managerial perspective, the report inventoried material and human resources, operation and maintenance costs and the “productivity” of this system. In the first part, “Diagnosis,” the report deals with the aims, reality, organization and resources of the system. The resources are divided in “infrastructure, human and financial resources.” (pp. 1-73). The second part, “Specific courses of action,” deals with infrastructure programs (prison and criminal courts building) for the metropolitan region, and “legal initiatives.” (pp. 74-150). The criminal procedure reform was present among these initiatives.
\item The commission argued that the prison administration was just one element of what they called the “the judicial carceral system.” The “Judicial Carceral system” comprised a “dynamic unit of elements, structures and relations that have their origin in the concept of criminal justice” (Chile, 1980:3).
\item The 1986 computerization project resulted in a pilot project in the Santiago civil law courts (PEÑA 1993: 404).
\item The formula to predict crime occurrence was C= f (FE,ESE, Un, Ed, NEB, PS, PL, IE, JS, PU, SF, CS, SocC), where C (crimes) are a function of FE (family environment), ESE (External Social Environment or
\end{enumerate}
}\normalsize
were involved in three factors: IC, “investigatory capacity,” SC “rapidity and efficiency in the application of justice” and PU “harshness and proportionality of punishment, according to the gravity of crimes and the amount of damages produced” (ODEPLAN-CIAPEP 1991:10). Even if the criminal procedure and managerial reforms never prospered, the economists and the legal scholars converged on the issue of transforming criminal justice by reducing duration of trials, and expanding plea-bargains, and summary trials, while increasing the role of oral hearings. This initial convergence would later facilitate the attempts for reform of the 1990s.56

While the Supreme Court and economists took hold of court reform initiatives, most of the old progressive scholars from the NPD reconvened and rearmed themselves with new expertise. They associated themselves with other new groups of scholars also interested in fighting the dictatorship, whether from within Chile or abroad. They combined their old expertise with human rights and critical criminology discourses, and they were on the lookout for a new academic environment (since The University of Chile had expelled them). In the subsequent years, they acquired new political contacts, international financing, and new institutional platforms from which to launch their comeback.

From the members of the old “New Penal Dogmatics”, some went into exile, while others stayed in Chile. Juan Bustos Ramirez left the country for Argentina, and thanks to his German and Argentine contacts, he proceeded onto Germany, after which he began teaching in Spain. There he combined his liberal dogmatic studies with critical criminology (Bustos 1983). Of those who stayed in Chile, Jorge Mera Figueroa began to connect the study of criminal law to human rights. He first worked at the Academy of Christian Humanism, a university made to protect activist-lawyers. It was created in 1975 by the Vicariate for Solidarity, a human rights organization protected by the church. There he combined legal studies with human rights activism. By the mid-1980s, he was studying authoritarian penal legislation from a human rights perspective, with the aid of younger assistants, including, Juan Enrique Vargas who was to become of the two core protagonists of the 1990s reforms (Mera Figueroa, Gonzalez and Vargas 1987). By 1987 Mera Figueroa had moved to a more hospitable and private new law school, the Diego Portales Law School. There he began challenging the conservative criminal law scholars who had stayed at the Universidad de Chile, proposing instead a “democratic criminal law” approach (Mera Figueroa 1989:55).

The Diego Portales Law School became a central place where expelled scholars, politically involved lawyers, and even critical judges converged. The combative dispositions of the professorship and directors, as well as the dominated position of the law school vis-à-vis the Chile University and the Catholic University law schools, favored a critical approach when it came to both political involvement and to state

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56 This “early” convergence takes place a decade before than what Muñoz and Langer describe in their detailed, but incomplete, reconstruction of the criminal procedure reform in Chile (See Muñoz, 2011. and Langer 2007).

[p. 140]
transformation. The first dean of the Diego Portales Law School was Jorge Correa Sutil, another newcomer to the legal profession, and a young figure within the Christian Democracy. In 1979 he had been secretary in the so-called “Group of the 24,” a political and academic group that had gathered the political opposition in 1978 to discuss the constitution of 1980. Afterwards, he studied law at Yale, where he absorbed the notion of the liberal and politically active US lawyer, providing himself and adopting a new model for legitimizing and continuing the legacy of the activist lawyers of the late sixties and early seventies.

At Diego Portales, “academic debates, that began with the protests of 1983 and 1985 in Chile, turned very soon into political debates” (Interview Jorge Correa Sutil, August 2009). Central political figures, like Francisco Cumplido, who would become Justice Minister in the first democratic government, were part of the staff. This law school also became a gathering place for leftist judges—a portion of the “Judges Association” used the space to develop their ideas for creating a judicial academy and for changing career regulations. Finally, in close connection to both the sociolegal studies tradition that had developed in Chile in the late 1960 and early 1970s, and to the human rights reports of the 1970s and 1980s, the Portales School renewed, in the late 1980s, a tradition of empirical studies. If in 1970s the empirical sociolegal scholars aimed to direct the institutional changes imposed by Frei’s government, in the 1980s they criticized justice institutions and tried to position the Diego Portales law school as on par with the Universidad de Chile Law School resorting to empirical studies. From a mix of old liberal criminal law scholars combined with the political orientation of Christian-democratic legal scholars came the ferment that would result in the post-transition programs for justice reform. This same ferment also eventually led to the proposals for criminal procedure reform that emerged in the early 1990s.
Figure 3-7 Criminal courts field, Chile, circa 1990

Formal legal principles and coherence

politico-economic concerns
3.4.2. A new criminal justice for the Chilean market democracy

3.4.2.1. Democratic authorities against autocratic judges: the continuation of politics through reformist means

The democratically elected executive branch found itself in a dominated position in relation to the Supreme Court, so it developed institutions to alter the inherited balance of power, much as was the case in the policing field. In turn, at the moment of transition, the space of experts in criminal justice reform represented a structural homology to the space of relations within the more general criminal justice field. The dominated position of the subordinated reformers (liberal legal scholars and economists) vis-à-vis the conservative legal scholars at Universidad de Chile (who were closer to the Supreme Courts) was homologous to the dominated position of the central government vis-à-vis the Supreme Court in terms of control over justice policy initiatives. These two independent structural tensions converged in producing the reform within the courts.

It is the most dominated of the dominated progressive legal scholars, Juan Enrique Vargas and Cristian Riego—assistants to Jorge Mera Figueroa, Juan Bustos and Jorge Correa Sutil—who invested their meager academic and political capitals, which included personal contacts with Maier and Binder from Argentina—to acquire leading positions within the group of progressive reform scholars and to become recognized within the space of reform experts as leading figures. After doing so they aligned themselves with the also-dominated economic experts. These two groups provided the government with a whole new program of reform for criminal courts that replaced the justice reform program that the government had initially devised. After the government had been unable to put a supervisory organ into place to govern the judiciary, it rapidly embraced the criminal procedure reform program that Riego and Vargas proposed. The government deployed this program in its own struggle against the Supreme Court to change justice but also to increase its control over judicial policies. The convergence of these two structural tensions (within the space of experts and within the overall criminal courts subfield) led to the emergence of the grand and massive program to overhaul the criminal justice administration through a post-transition criminal procedure reform in Chile.

The first democratic president, Patricio Aylwin, tried to increase his political control over judicial policies, taking over a number of Supreme Court roles, and proposing a grand reform program based on the idea of a special judicial council governing the courts. In doing so, he was borrowing the ideas of the “Group of the 24”—the group that had countered the government commission’s 1980s Constitution. By 1991, the plan consisted of: increasing the number of Supreme Court judges, initiating a program to improve access to justice, regulating judicial careers; creating a judicial academy; reorganizing the Supreme Courts into different specialized branches of the law, creating a judicial police, and creating a forensics service. The plan also proposed to introduce a public prosecutor’s office (Peña 1993:413-414). A Judicial Council would implement the policies it deemed to be consistent with the legitimate authority of the democratically elected executive branch.57 The weak Supreme Court, even if it had

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57 Advisors to the Justice ministry advanced the distinction between “purely judicial activities” and “administrative, judicial policy and designation of occupants in higher posts” (Peña 1993:414). These latter
limited political resources, was backed by its special constituencies, the former members of the military governments and right-wing parties, and so was able to defeat the “package.”

The right-wing parties, Independent Democratic Union (UDI) and National Renovation (RN), initially accepted the judicial academy, all the administrative improvements, and the changes in the criminal procedure, which included dividing the labor between prosecutors and judges, introducing oral hearings, and increasing overall efficiency.\(^{58}\) However, in the end the right-wing parties objected to the creation of the Judicial Council out of fear that it would see that military and police officers were prosecuted for human rights violations. These proposals were debated in the midst of an ongoing discussion about the value of self-amnesty laws, a discussion that became heated after the publication of the Truth Commission Report, the Rettig Report of 1991 (Comision Nacional de Verdad y Reconciliación 1991), which ultimately limited the reception of the reform package.\(^{59}\)

By 1992 the reform package had been halted. The right-wing parties agreed to debate the policies they backed, but the proposal to establish a Judicial Council—the core of the—“reform package” was set aside. However, a few months after President Frei’s inauguration in mid-1994, suddenly criminal procedure reform was announced as the “gran modernization of justice.” Once a minor ingredient of the reform package, it became the centerpiece. Justice Minister Alvear and the press announced a major overhaul of the criminal courts, a new criminal procedure, the institutionalization of a prosecutors’ office, and the institutionalization of a massive public defense service. Criminal procedural reform’s centrality was thanks to the work of the reform entrepreneurs who had witnessed the government’s initial failure to change the justice administration.

3.4.2.2. Liberal legal scholar and economists reformers converge

The defeat of the “justice reform” package meant the defeat of the elders among the reformist coalition, including Justice Minister Cumplido and Jorge Correa Sutil. Their young assistants, Jorge Enrique Vargas and Cristian Riego, used the defeat expediently. Between 1990 and 1994 they carved out new and independent positions within the reformist coalition. While their position-taking on reform combined all the elements that had sustained their seniors’ reform proposal, theirs appeared to be novel and distant from the old proposals. The young Vargas and Riego reconverted their social, legal, and technical capitals into a new type of legal capital of criminal procedure expertise. This realms corresponded to the executive on the grounds that only it had “democratic legitimacy” (Peña 1993:414) and did not violate the constitution. The government’s plan also distinguished itself from right-wing parties whose approaches were considered limited to a “managerial rationality.” Instead the government proposed tackling the problem of “substantive rationality,” that is, giving the executive or elected authorities control over “justice policies that lead to the efficiency of the system in a way that maximize the expectations that are put forward through the political system.” (Peña 1993: 416).

\(^{58}\) The UDI, through its think-tank Libertad y Desarrollo even cited the “necessity of introducing the Interamerican Institute of Procedure law project which was based on the principles of immediacy, concentration, publicity and orality” (Peña 1993:419).

\(^{59}\) The Supreme Court continued sustaining the validity of the self-amnesty, and rejected tout-court the report that profiled the court as inactive and weak in the face of abuses of human rights during dictatorship.
new capital combined legal acuity with political arguments, empirical analysis, and international legitimacy. They combined the older critical legal traditions—liberal criminal law and critical criminology—with the newer one of human rights, along with empirical analysis. They created a new type of authority in this space and used it to back criminal procedure reform within the reformist legal coalition.

Only by locating Vargas and Riego within this space of local reformers and by taking into account their different dispositions, product of different social, political and academic trajectories, can we understand their investment in criminal procedure reform and their specific position-takings. Both had accrued a rare combination of learned, social and political capitals before becoming the leading criminal court reformers. Cristian Riego was a complete newcomer to the legal profession, and he invested in the theoretically rich specialty of criminal law. He did so under Sergio Yañez, one of the few members of the NPD group that had remained at the Universidad de Chile Law School. He satisfied an older political vocation, participating in the Academy of Christian Humanism (AHC). There he met Jorge Mera Figueroa, which led him to synthesize liberal criminal law with human rights and labor economics. It was at the AHC program where he learned the social research methods to determine the effects of social policies on the working class (Interview Cristian Riego, June 2009). Through Mera he met Juan Bustos Ramirez, who was close to the by then famous and renowned Julio Maier and had just returned from Spain, returning to the academy and the political field, bringing with him critical criminology.  

Juan Enrique Vargas came from a family of lawyers. After experiencing the closeness of the conservative law faculty at Universidad de Chile, he also invested early on in studying human rights law, becoming assistant to Jorge Mera Figueroa, and then to Justice Minister Cumplido. By 1990, at the moment of transition, both Riego and Vargas had fully participated in the judicial reform policies of their elders, including having worked for the Rettig Commission, where Jorge Correa had been secretary, and having witnessed the defeat of their elders. At the same time they began working with Bustos and Mera in a “Criminal Policy Association,” combining liberal criminal law with empirical studies (Asociacion de Politica Criminal 1991b). Very soon, from their combination of contacts and skills, they began to be able to produce their own positions.

Riego began developing his own approach to criminal law while Vargas began working at CPU—an NGO working on justice issues back in the 1960s—to obtain funding for their own criminal procedure studies. Riego, working at the new Center for Judicial Research at Diego Portales—with Ford Foundation money—developed a different approach to analyzing national laws, merging dogmatic analysis with critical criminology, human rights, and his empirical research skills to determine the effects of the system on the poor.

While teaching criminal law for Jorge Mera I started to develop a much more empirical vision, and writing articles on the workings of the system, something that criminal scholars don’t do, they write mainly about theory. I wrote one about pre-trial detention in Chile, that had a very good reception. and with that article I

55Juan Bustos also brought Maria Angélica Jimenez, who was a social worker that specialized in critical criminology in Venezuela, with Lola Aniyar de Castro, and who had a vast experience in empirical studies on justice workings (Interview Maria Angelica Jimenez, July 2010).
opened up my own space within criminal law. Having an empirical approach I called people’s attention. Writing it I also realized that the problem wasn’t so much criminal law. It was the criminal procedure (Interview June 2009).  

Riego’s innovations coincided with Vargas’ decision to abandon his planned litigation career for the politics of law: “After having worked in the Rettig Commision, where I could feel that the most important events of the era where passing in front of me, the idea of working as a lawyers representing old ladies who claim an increase of their pension, just did not feel attractive anymore” (Interview June 2009). Vargas returned to CPU, where the gringo money was available (Interview June 2009). After the Rettig report was delivered, Jorge Correa put Vargas in charge of administrating CPU’s research programs related to justice reform. At Portales, Riego continued producing his “innovative” empirical studies on the selectivity of criminal justice, while Vargas used his role at CPU to advance the study of criminal procedure. Using the resources and legitimacy of CPU and Portales, they ran a small forum where they discussed criminal procedure issues. With funds and the sponsorship of USAID, they organized a now legendary meeting with Julio Maier and Binder, the Argentine scholars, in Valparaiso on October of 1992. After Vargas introduced Maier and Binder to the legal community of Chile as “almost mythical figures,” Riego presented a paper that skillfully combined his knowledge of Chilean criminal procedure law with empirical evidence about the practical working of the system (see Riego, 1993).  

By 1993, Vargas and Riego had shifted the issue of human rights and criminal justice reform from dictatorship-era issues to new problems, such as the routine violation of citizen’s rights in a democracy, or criticizing legal statutes based on empirical critiques of existing normative regulations. In this way they preserved the values of liberal criminal law, but instead of responding with dogmatic analysis and deductions, they responded with empirical inductions about the ways in which the workings of the judicial system, and not the existing normative system, contradicted the principles embodied in

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61 Riego highlighted in the introduction of this first published piece that that he combined studies of “official regulations,” and, “most importantly, personal interviews with judges, lawyers, and other operators” “statistical information”, “national doctrine on criminal procedure, [and] another line, to which [he] had access to, investigations in different places of Latin América. [This] approach with an emphasis in empirical work integrates elements of the social sciences, with a systemic approach that inquires about how internationally recognized human rights dimensions are affected by the concrete workings of the penal systems operating in each country.” (Riego 1990:14–15)  
62 This same combination of critical criminology, human rights, dogmatic and empirical analysis is then continued in a thorough study of all facets of the criminal procedure from this perspective with Marfa Angelica Jimenez “The Chilean criminal procedure and human rights” (See Riego 1994, and Jimenez 1994), produced during 1993 and 1994, in the middle of the discussion of the forum. About the same period, Vargas, was concentrated in studying the prosecutors (Vargas 1993).  
63 In that meeting they invited Julio Maier and Alberto Binder, but also marked a distance from their immediate competitors, which were not so much the other member of the legal profession but their own teachers. After the Dean of the Valparaiso Law School presented the meeting as combining “dogmatic analysis, judicial policies and comparative law” (Squella, 1993:12) Vargas immediately reframed it arguing that this was a meeting to discuss the criminal procedure as a means to protect human rights of citizens in a democracy. For that, the most important technique was not comparative dogmatic analysis but empirical evaluations of how these comparative experiences worked on the ground (Vargas 1993:12-14).
law. Besides these unique juridical capital, they also had unusual political contacts and international networks.

Very soon they began gaining positions and recognition, deploying their legal-empirical critique to advance the cause of criminal procedure. To capture spaces, they played simultaneously with different capitals within CPU, the legal community, and the political opposition. Having experienced the defeats of their elders when faced with the polarization of the political field, they invested heavily in reaching out and involving the right-wing opposition. In 1993 they were able to exploit a crisis at CPU. After USAID objected that the previous work on judicial training, access to justice and justice administration reform “wasn’t producing many effects.” (Interview, J.E. Vargas), Vargas was able to introduce the issue of criminal procedure within the CPU program of justice reform. In the second semester of 1993, they launched, following Binder’s suggestion based on his experiences in El Salvador and Guatemala, a bigger “Forum for oral hearings in criminal procedure,” inviting legal scholars, judicial actors, private lawyers, and political agents. “The idea was to have people from the left talking with people from dictatorship, Juan Bustos, with the conservative right” (Interview, J.E. Vargas, May 2009).

The forum—that met between August 1993 and January 1994—consolidated the consensus between the legal-scholars and lawyers, judges and political agents from different political factions about the need to change the criminal procedure. The forum also allowed Riego and Vargas to access the valuable contact of Fundación Paz Ciudadana (FPC), including their privileged access to the national press. They organized two working committees, which they led: the “direction committee” and the “technical committee.” The direction committee was formed by Vargas, Riego, and the CEO of the right-wing FPC. Riego and his assistant Mauricio Duce, and two criminal law scholars Jorge Boffil—with a PhD in Criminal Law from Germany—and Maria Inés Horvits—with a PhD from Spain and Bustos’ student—formed the “technical committee.” Leading the Forum, they set the agenda in each committee, and dividing the technical and the political, they dominated both sectors.64 Binder also became an “advisor” to the forum (Palacios Muñoz 2011:55).

The forum also allowed younger and elder economists working at FPC to capitalize on their expertise on justice policies in the 1980s. Under-director of FPC, Francisco Jose Folch, who worked with the economists of ODEPLAN as Under-secretary of Justice in 1978, hired Carlos Valdivieso—a young economist, who studied in San Diego, California for eight years, specializing in investment banking—to continue to use the economic expertise in judicial matters he accumulated in the 1980s. The economists’ perspective, and the entrepreneurial and investment banker dispositions of Carlos Valdivieso, who had worked in investment banking in the US prior to enter FPC—helped draw attention to administrative and infrastructure concerns, but also embedded the architecture of the criminal procedure itself, the traditional province of legal scholar, with

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64 Indeed, the forum discussed alternatively empirical aspects, legal principles and institutional developments. According to the secretary of the forum, Duce, the meetings dealt with “general [empirical] evaluation of the functioning of the system, principles of criminal procedure, organizational aspects, evidence rules, investigatory systems, selectivity and prosecution policies as well as the prosecutors’ office” (Duce 2004: 7).
notions of a market and of cost-benefits analysis. The economists also proposed the placement of administrative specialists within the criminal courts and within the prosecutor’s office. After the lawyers expressed their opposition to the idea that the attorney general should be an “economist, considering that his main functions were high management” (Valdivieso 1998), the economists proposed the creation of a general managing office under the direction of the general prosecutor, and a managing division under each regional prosecutor.

In their convergent trajectory toward more central positions within the criminal court field, the economists at FPC and the young legal scholars at Diego Portales easily found common ground. In 1994 they signed an agreement to “promote the reform” and collaborate, recognizing each other’s “academic excellence,” in the name of politics. Vargas and Riego also put Binder and his team in contact with FPC, and they collaborated during 1994. By mid-1994 the two groups had reached a consensus and they were recognized as new authorities on the issue of justice reform. To make their plans real, they transcended the protected realm of the academic and technical exchanges and mobilized their respective political contacts.

3.4.2.3. Political agents vs. the courts: the center-left and right converge on expanding and exalting the new criminal courts

If by the end of Alwyn’s administration in 1994 criminal procedure reform was not at the center of the political agenda, by the end of Frei’s administration, six year later, it was deemed the “reform of the century.” As in the case of the police, the structure of relations between the courts and the political system and the balance of power among parties propelled the full institutionalization of the criminal procedure reform, which included the institutionalization of a powerful and independent prosecutor and an expanded public

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65 According to the economists at FPC the reform meant a profound innovation as it embraced “competition” within the system, in particular between the defendant and prosecutor. Second allowed prosecutors to archive some cases which served to “rationalize investigatory investments.” Third, by adopting summary trials it introduced “innovations in the methods to generate the product justice.” Fourth, the system incorporated “instances of negotiation” through plea-bargain, which implied a reduction of costs, in particular by avoiding going all the up to the final oral hearings” (Valdivieso 1998:78) All these elements and innovations were then considered from the perspective of “project evaluation,” in a study were Ernesto Fontaine and the Economics Department at the Catholic University, concluded that the new solutions and the new designs was “socially and economically profitable.” (Valdivieso, Fontaine and Gerth 1996:17)

66 Each regional attorney would also have a general management office with one legal division (the criminology studies division), and four managerial divisions (informatics, finance, human resources, and evaluation and development divisions). These special management division, were also present in the Argentina project (Coscov, 1989), but if in Argentine reformers were concerned for reducing pretrial detention and the length of trials to reduce the intervention of the courts in the name of respecting citizens’ rights, in Chile the economists were concerned for knowing how “much less does the new system costs to process the same amount of demand for justice”

67 The working agreement “recognized that the work for reform was multidimensional, that is, that it involved not only legal changes but the parallel development of other dimensions; (ii) conceived the technical work with academic excellence, which nonetheless aimed to propose a realist project that took into account the social and political reality of the country; (iii) opened to the political and legal community; and (iv) destined to be given to political authorities, it considered their objectives and priorities.” (DUCE 2004:8).
defense service. Neither the government nor the opposition controlled the courts, and each sector invested all their political capital into creating new penal bureaucracies and services, each for their own reasons. The ministry of Justice of the PDC, Soledad Alvear, had a special incentive to advance the reform, and she mobilized her party to capitalize on the reform. However, the criminal procedure reform provided the opportunity for both the right and the left to envision the fulfillment of their dreams. The neoliberal right longed for a bureaucracy that would provide more intensive penal control, while the left wished for a bureaucracy that provided state services that could help compensate for limited services in the welfare arena (Wacquant 2009b). While no political group ended up controlling the new criminal courts or the prosecutor, as was the case in Argentina, political agents still benefited from these policies. They were able to appear in front of the citizenry with claims to have addressed crime and insecurity issues, thereby governing through the creation of crime-control institutions (Simon 2007).

While the Concertación and right-wing parties had expressed their willingness to change the criminal procedure and organize a prosecutors’ office, the project was just one among many within the package of justice reforms in 1993. In late 1993, Vargas and Riego and FPC suggested the presidential candidate put it in his electoral platform (Palacios 2011:58). On May 1994, in his presidential address to the congress, President Frei presented a more detailed criminal procedure program and declared it a priority within “justice and security sector” policies. Justice Ministry Soledad Alvear took advantage of the criminal justice policy to help foster her political career, knowing the move would garner her positive coverage in the press. Besides Minister Alvear and the governing coalition, the political right was also willing to back the reform, seeing as it was related to issue of crime and insecurity. A protracted struggle ensued, where political agents deployed all their political capacities to transform the courts in accordance with their political interests. In June of 1994, the Justice Minister “had no idea that the following years will include a coordination team, two constitutional reforms, the designation of new members of the Supreme courts, economic studies, [and] or dialoguing almost weekly in the parliament” (Interview Alejandro Blanco, Justice Ministry, August 2009).

Minister Alvear contacted FPC and Riego and Portales and “invited the institutions that generated the reform and…the initiative…acquired governmental status” (DUCE 2004). By late 1994 the technical team had finished a draft of the new criminal

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68 The other “justice and security sector” policies included neighborhood and administrative courts, a public defense office, prison building and privatization, juvenile justice, and the old project of a judicial academy (Presidential Message 1994:42-43). The president framed the proposal as responding to concerns for the rule of law, but also security: “We must profoundly reform the criminal procedure, in a way that rapidly solves conflicts and permits a direct contact between those who demand justice and the judge. It is also necessary to separate the investigative function—that should be given to the Prosecutors’ Office—from the adjudicatory function. All this is necessary to secure the right of due process that corresponds to a democratic state, obtain sanctions for criminals, protect victims and give security to the citizenry.” (Presidential Message, 1994:41)

69 On mid 1994 the director of FPC, Agustin Edwards met with Justice Minister Soledad Alvear and asked her to privilege the criminal procedure reform from among the other justice initiatives and in exchange El Mercurio, the newspaper that Edwards owns, would give her a privileged treatment in the press. According to Ramos and Guzman de Luigi “in the evaluations that from time to time are published by El Mercurio Minister Alvear received between 1994 and 1999 a superior evaluation from among Frei’s ministers.” (2000:78).
procedure code, and it published a first version in January of 1995. In July of 1995, the president presented the draft to Congress. After the reform bill was presented to Congress, the Justice Minister created a more stable special team called the “Coordination Group,” formed by representatives from FPC, the Diego Portales School and its own members. This team was in charge of planning the “technical legal, communicational and political dimensions,” strategic decisions, periodic evaluations of the products of the forum, and its technical committee. By the end of 1995, this team produced a bill proposing the prosecutor’s office, as well as a bill for the re-organization of the courts. In 1998, the Coordination unit became the “Reform Coordination Unit.” In this body, legal economists, architects, computer experts, and staff of the Ministry of Justice took the leading roles; legal experts became less central.

To achieve the passing of the reform bill, as well as to ease the acceptance of the new orientation of the courts, the government changed the composition of the judiciary, including the Supreme Court. After 1995, the “new designations of judges have been practically conditioned by the fact the candidate would favor the ‘reform of the century’” (Correa Sutil 2002:309). At the same time, after a member of the Supreme Court was subject to a political trial that threatened his removal, the Justice Minister proposed and obtained a constitutional reform in 1997 regarding the composition of the Supreme Courts. The reform obliged members of the court over 75 years old to retire, and mandated that at least five members of the court should come from outside the justice bureaucracy. As a result, the new Supreme Court members had greater academic credentials than those of the rest of the judiciary. The changes in the courts favored a change in the political and ideological preferences of the Supreme Courts toward “the reform of the century.”

With the special teams, the backing of the press, and the staffing of lower and high Courts, the government began changing the criminal court system. They converted the system into an instrument of crime control at the point of less resistance: the public prosecutors’ office. In November of 1996, the executive branch proposed to congress that the Public Prosecutor Office be included in the constitution. The President justified the new organ that “entailed a more efficient persecution and a selection of cases on the bases of explicit politico-criminal criteria…the public spending in this sector will take place on the bases of controllable criteria.” [and] will be a state organ specialized in criminal prosecution, the protection of victims and the impartial and rapid repression of crime” (Presidential Message 1995:10). All parties agreed to change the constitution to create an autonomous and professional national prosecutor’s office. The reformed constitution put all investigatory activities into the hands of the prosecutorial administration, creating an instance that decided and implemented the crime policy

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70 The CPR project was framed within the ideological consensus between parties. At the ideological level, the CPR reform reflects the general acceptance of a liberalized economy and the consolidation of democracy. According to the president the “modernization of justice the government tries to favor the consolidation of the rule of law and an export-led development and open economy that privileges private initiatives” (Message accompanying the legal initiative to congress).

71 Enrique Curry came from the University of Chile Criminal Law department and was a late participant in the NDP. Another one was a professor of administrative law, and the ones who came from the judicial career but they were all “legitimated by the academic value and career” (Interview Alejandro Blanco, Direct of the Coordination team, August 2009).
autonomously \(^{72}\) and gave prosecutors the right to archive a case, to conditionally suspend a case, to put the accused under supervision, to engage in plea-bargaining, to push to a summary trial, or to go to an oral trial. According the constitution the Supreme Court, the Executive, and Congress participated in the designation of the national prosecutor and in its eventual removal. This prosecutorial political machine was deprived of electoral political potency, as the General Prosecutors and other prosecutors were prohibited from engaging in politics for two years after the end of his mandate. In March of 1998, the Executive sent the bill proposing the organization of the prosecutor’s office. This time the Supreme Court declared that it accepted the creation of the prosecutors’ office.

The power of the old judges was left intact when it came to the two issues about which some political groups were concerned: prosecutors were not competent on military crimes and could not intervene in cases involving past human rights abuses. But beyond these two exceptions, the whole political arch and the modified Supreme Court accepted a massive transfer of power from the courts to the newly created prosecutor’s office. The legislative branch passed the new bill in October of 1999.

Once the prosecutors’ office had constitutional recognition, the government began to discuss criminal procedure reform. One year later, in 1998, the Executive presented the new Organization of Justice Administration Bill to Congress, who approved the bill in 1999. The new court re-organization created first-instance courts (juzgados) and oral tribunals (tribunales orales), composed of three judges. The new act put into place a huge number of specialized criminal courts. Before the “reform,” there were 52 first-instance courts specializing in criminal issues, most located in Santiago and other major cities. After the reform, there were 751 judges specialized in criminal law (355 as first-instance warranty judges and 396 in oral tribunals) (Duce 2004). This army of criminal-court judges was now backed by a general management office that ran the management aspects of the court and provided services to all the judges. The new bureaucratic structure incorporated lawyers, economists, accountants, computer experts, and public relations experts.

The new prosecuting and sentencing bureaucracy would not work with the old personnel of the criminal courts. There was no “reform” of personnel. The so-called reform consisted mainly of creating a new a completely different criminal courts bureaucracy. According to the director of the steering committee, Alejandro Blanco, the Ministry of Justice negotiated with the judicial employees’ association for free special training and the choice to move to the civil courts. Others were offered early retirements. Regarding the remaining lower-court judges, there were very few (52) who were specialized in criminal law. Of those, about 75% retired or went to the new criminal justice system. The initial 52, who could have been conservative, represented less that 10% of the 700 new judges specialized in crime assigned during the following year.

In October of 2000, the Congress also passed the Criminal procedure reform Bill (Law 19,696), which regulated the division of labor in the courts. On March of 2001, congress institutionalized the public defense service, another major innovation. The new system replaced an old system where young lawyers volunteered their services as they prepared for their bar registration. The public defense service created was a centralized

\(^{72}\) The Constitutional Committee decided that “Public criminal prosecution, a transcendental part of crime policy, must be in the hands of a high authority of utmost professional and technical nature,” (Senate Discussion, 81).
organization that contracted with private lawyers, retaining only a small number of permanent lawyers on staff. In this system, private lawyers competed among each other to win the contract. Defendants who could pay lawyer fees would do so. The Public Defense administration was also divided between judicial and administrative sectors. The defense service was designed to mirror the expansion of the prosecutorial administration, but it had fewer employees. Compared to 3,500 individuals working in the nation’s prosecutors’ administration, the defense service only has 145 staff lawyers and around 300 hired ones at any given time.73

The interests of all political groups certainly helped motivate this massive investment of state resources. The Finance ministry, which had been considering giving more resources to the police and the prison, willingly accepted all the different proposals, including the original criminal procedure, the prosecutor’s office, and the public defense administration. The new criminal courts system cost US$200M, four times more than the previous total cost of all justice services. The Coordination Unit prepared “investment studies” to determine the “social benefits” measured in terms of the greater efficiency of the system to deal with similar outputs (Valdivieso, Fontaine, and Wagner, 1998). This group of economists arrived at the conclusion that the new system was “socially convenient,” as it was “53% cheaper to adequately investigate with the new code than with the older system” (Duce 2004:13). If one added the costs for the defendant—measured in average daily income, and costs for lawyers and for the victim, the savings rose to 64%.” Also, following the suggestion of economists, the new system was implemented in phases, starting with pilot regions in 2000 and concluding in 2005 with implementation in the metropolitan region of Santiago. This criminal procedure favored due process and efficiency, with the latter emphasized over the former. As such it is responsible for the enormous growth in the prison population I describe in the next chapter, but at the same time it has reduced the proportion of detainees on remand from 66% to 24%, after five years in place.

73 It was designed to mirror the expansion of the prosecutorial administration, but it has much less employees. There are 3500 individuals working in the nation prosecutors administration.
Figure 3-8 The criminal courts field Chile, circa 2005 (after reform)

Formal law and coherence orientation                  politico-economic concerns

Bold: new agents

153
As we can see, rather than simply a criminal procedure reform, the process in Chile was a massive operation of “penal state”-building, were the highly motivated center-left and right-wing parties converged to put into place a massive bureaucracy of prosecution, sentencing, and defense—all after weakening the Supreme Court. The convergence of the strategies of political agents and politically oriented reformers helped build a consensus among Chile’s judiciary and its parties, leading to the changes we have seen. Paradoxically, the same models and the same expertise—even the same advisors—were used in Chile and in Argentina, but only in Chile, did the new experts and the central government and legislators converged changing the rules of the criminal courts game. Despite their failure in Argentina, the Argentine and Chilean liberal legal experts capitalized on this “successful reform” (which in reality was nothing less than a massive new penal state being built a novo) to re-position themselves in the local and regional authorities as a successful criminal-procedure code reform writers, just as their predecessors have done on every instance in which their political masters turned their theoretical designs into judicial reality.

3.4.2.4. Exporting and evaluating the Chilean “reform” abroad

Given the effective implementation of the new criminal courts, prosecutors, and defense bureaucracies by 2005, the original experts acquired national and regional recognition as the new authorities on criminal procedure reform. To secure their investment, the original criminal reform experts, Vargas and Riego, went back to school and then into the academy. In the case of Vargas, he pursued an MA in Public Policy Management and the University of Chile in 1998, while Riego obtained a LLM in 1996 in Wisconsin. With these new advanced credentials, they returned to academia once the criminal procedure process was captured by the Justice Ministry after 1997. In 2000, once the criminal procedure draft had been passed in congress, they again received the help of Soledad Alvear, in her condition of Foreign Affairs ministry to convince the Organization of American States to create “a supportive and evaluative organization for judicial reforms for Latin American” in Santiago (Langer 2007:656), launching the Justice Center Studies of the Americas (JCSA or CEJA). The scholars from Diego Portales, took control of JCSA and very soon they found themselves at the center of the regional networks of criminal reform experts (Langer 2007:656; Palacios Muñoz, 2011). At the JCSA they have become advisors for national governments and international organizations, and along with Alberto Binder, Juan Enrique Vargas and Christian Riego are 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 2007:65).

Certainly this reputation was made possible by the collective denial of the very specific conjuncture that made the reforms possible in the first place. In this denial, these experts are also able to claim for themselves to be legitimate judges of the objective distance between their blueprints and the judicial reality in other political contexts. Since 2000, CEJA has also become a major consultancy organization, in particular regarding the evaluation of state investments in justice reform. The JSCA replicates and exports since 2000 the peculiarly Chilean standard of evaluating the efficacy of state investment. In their new international consultancy service, they replicate the evaluation they
performed in 2003 of the first steps of implementation of the Chilean Criminal Procedure. 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 from within the collective. In this case, since 1999, once “the reform has taken its course,” Duce obtained new money from the Flora Hewllet Foundation so as to invest in developing studies to “empirically evaluate the reform” (Interview, Mauricio Duce, August 2010). He also studied abroad, obtaining a LLM in Stanford in 2000—to distinguish himself from his elders and from the legal scholars at the Universidad de Chile who had studied criminal law in Germany. Andres 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 1990 within the space of reform experts. Since then, the young leaders and their assistants in Chile have become criminal procedure advisors to reforms programs in Peru, Bolivia, Mexico, Venezuela, and even in the provincial courts system of Argentina. In many of these cases, they have also provided their own evaluative technologies, further marking the distance between the incomplete developments they’re evaluating and the accomplished achievements in their home country.

3.5. Summary and conclusions

In each case I observe the same mechanisms producing the emergence of reform proposals in the 1980s in Argentina and 1990s in Chile: The revival (and transformation) of the old position of the criminal-code writer in the academic pole of the criminal courts field explains the contents of the reform and the strategies they deploy to transform the courts. These strategies of the expert-reformer, coincided with struggles between the central government and the Supreme Court over the control and direction of criminal courts policies at the moment of transition. The core difference that explains the outcomes of the struggles, waged by activist experts and managerial experts against conservative scholar and by political agents to fend of their political opponents, were the degree of political authority and autonomy over judicial policies the courts maintained in relation to the central government and the parties.

To understand the emergence of those specific contents of reform we had to reconstruct the historical position of the criminal procedure code writer, its intrinsic dual— theoretical and political composition and orientation—and show how different newcomers to the juridical field revived it in different political contexts and times and gave it a new content—from the traditional and circumspect code-writer reformer of the 1960s to the aggressive activist-code writer reformer of the 1980s and 1990. This was essential to understand the specific contents of the reforms proposed and the emergence of criminal justice reform programs after transition to democracy in both countries. As I showed, these reform programs pre-dated the recent transition to democracy in each country for many decades. At the same time, even if this position of criminal procedure code reformer involves international capitals, which were mobilized in international strategies at home, the operation of these capitals can not be understood as a local epiphenomenon of an hegemonic globalization process (Rodriguez 2001), and much less reduced to a process of foreign imposition sponsored by governmental networks (Andreas and Nadelmann 2006). These demands for criminal procedure reform arose out
of the strategies of agents in the juridical field to advance their positions within the juridical field, into the political sector of the criminal courts field, to return to the academic pole of the juridical field, after the reforms were passed. But analyzing these trajectories of the criminal code reformers and of the agents of the juridical field involved in reform is not enough to understand the success of their attempts. These depends on the balance of power within the greater space constituted by the criminal courts fields.

In both cases the executive and the legislative branch agreed to expand and change the criminal courts and prosecution bureaucracies backing the strategies of the code-writers. The results of the convergent strategies of the political agents and the expert-agents were very different in the two countries. In Argentina, the low autonomy of courts, the weakness of the first administration, and the second administration’s strong control over the courts all served to defeat the reform coalition. The interest of the executive branch in keeping political control over courts trumped the concern for producing an efficient or legitimate criminal court bureaucracy and an independent prosecutor’s office. In Chile, the greater autonomy of the courts led political authorities and parties to invest in an alternative bureaucracy that would become more politically profitable for all political agents, and in particular to the incumbent administration. The organizational changes that resulted from these struggles were very different in each case and the workings of each of the new criminal courts bureaucracies were very different indeed, and so were their material and symbolic effects as will see in chapter five.

To anticipate only, if we compare the demand and output of the court systems in the metropolitan Santiago region (ca. 7,000,000M) and the city of Buenos Aires (ca. 3,000,000) after reform, we observe similar numbers of cases entering the justice administration relative to the population, but a greater output in Chile (see table 3.2). The metropolitan Santiago courts annually produce 84,000 judicial convictions, whereas those of Buenos Aires only produce 6,602. Even if the Chilean cipher includes cases of alcohol violations (200,000 of 520,000), which are easier to process, the criminal courts of Santiago still deliver ten times more probations than the Federal justice in the City of Buenos Aires. Within a one-year period, the Chilean system solves almost 100% of cases, while in the Argentine only 30% of cases are decided in a year (CEJA 2005). Even at an administrative level, as both systems expanded, Chile evolved into a new and efficient system, while the Argentine one grew into a bigger version of the old one.
Table 3.2 Criminal justice of Santiago and Buenos Aires caseload and sentences

<table>
<thead>
<tr>
<th></th>
<th>Population</th>
<th>Case entered</th>
<th>Fillings /100,000</th>
<th>Prosecutors / 100</th>
<th>Cases with unknown author</th>
<th>Cases with Known author</th>
<th>Prolations</th>
<th>Annual convicting sentences</th>
<th>Plea bargain</th>
<th>Abbrev. trial for minor crimes and fines</th>
<th>Oral Trials (thousands)</th>
<th>% Prisoners on remand</th>
</tr>
</thead>
<tbody>
<tr>
<td>Santiago, Metropolit. region 2008</td>
<td>7 M</td>
<td>520,476</td>
<td>7435</td>
<td>4.6</td>
<td>307,849</td>
<td>212,627 (41%)</td>
<td>57,444</td>
<td>84,023</td>
<td>16,453</td>
<td>66,341</td>
<td>2,2</td>
<td>24</td>
</tr>
<tr>
<td>Buenos Aires Fed. District 2003</td>
<td>3 M</td>
<td>244,203</td>
<td>8420</td>
<td>4.6</td>
<td>146,890</td>
<td>77,645 (31%)</td>
<td>2,303</td>
<td>6,602</td>
<td>3,146</td>
<td>6,258</td>
<td>1,4</td>
<td>27</td>
</tr>
</tbody>
</table>


These different criminal courts administration will be decisive to determine the work of police agent and of prisons. The specific transformations of the criminal court and the prosecuting bureaucracies in each country are crucial to understand prison policies and the transformations of prisons themselves. The lack of court reform in Argentina led to chronic over-crowding, conflict, and discontented demand for judicial solutions. In Chile, the massive and politically successful transformation of criminal courts reduced the number of pre-trial detainees, but has increased the prison population enormously after the implementation of the new criminal procedure. Still, the transformation of courts is only one among many factors that determine specific evolution of prisons in democratic times. The evolution of prison reforms after the return of democracy in the two countries calls for a similar analysis of the nested transformation of the carceral field inside the penal state of Argentina and Chile, a task to which I turn in the next chapter.
Chapter 4
The prisons of the new democracies: between correctionalism, human rights and populist and technocratic punitivism

Prison “reform” is virtually contemporary with the prison itself: it constitutes, as it were, its programme.
(Foucault 1995:234)

[Synopsis chapter four]

[In this chapter I explain the evolution of prison administrators’ official goals and the principles regulating prison regimes after the transition to democracy and their direct relation with changing incarceration policies in democratic times. First, I explain the attempts to reintroduce rehabilitation and programs based on classification and treatment in Argentina and to reinforce in Chile. After the transition to democracy, these ideals and programs were combined with demands for the protection of legal rights and dignity for inmates. Second, I explain why both rehabilitation programs and human rights standards were progressively displaced by attention to citizens security in the early 2000s. Finally I analyze how both the preservation of the rehabilitative ideal and the prison regime in the first decades of transition, chaotic in the Argentine federal prisons and the quiet prison regimes of Chile, were directly related to ulterior changes in imprisonment policies. After presenting the concept of carceral subfield and reviewing competing accounts of recent changes in prison goals, in prison regimes and on imprisonment policies in contemporary Latin America, I analyze each case, separately.

I begin reconstructing the common historical subordinate position of prison bureaucratic elites to political agents, following the emergence and consolidation of a correctionalist prison system working close to the (weak) judiciary before the dictatorship (that is, between 1930 and 1960). I then describe the different degrees of prison “militarization” under the dictatorial regimes. I focus, in this period, on the emergence of correctionalist professionals within and outside prison, and trace their changing relation to (militarized) custody officers and political agents in relation to shaping prison goals and regimes. After showing the building of a correctionalist consensus between 1940 and 1970s in each country, I analyze how the militarization of prisons during the dictatorship affected both the correctionalist programs and the position of correctionalist professionals. In Argentina the military, controlling prisons, militarized routines and programs and displaced correctionalist experts and criminologists. In Chile, by contrast, the military authorities preserved the correctionalist professionals and the rehabilitative ideal. The economists in government, kept focused on reducing reoffending rates and increasing community sanctions to reduce costs.

In the second part, I turn to the democratic period. I analyze the struggles and alliances between the central government, prison managers, and correctionalist professionals, as well as human rights activists. These struggles first led to the revival or restoration of rehabilitation programs combined with human rights demands. I then follow their eclipse by citizen security standards in Argentina and Chile. In Argentina, rehabilitation policies and attempts to legalize prison regimes reflected the de-carceration consensus held by political agents (interested in reducing prisons populations to diminish riots) and returning experts in the post-transition period. Paradoxically, the more riotous the prisons became, the more the authority of human rights activists was reinforced. Here human rights were able to
consolidate their position as they helped control prison turmoil. Outside prisons, the politicization of crime and changes in political parties produced the abandonment of initial decarceration policies and a turn to punitiveness. This turn further reinforced the position of the security-oriented prison officers and the human rights activists in the carceral field.

In Chile, the preservation of the correctionalist logic and community sanctions during the dictatorship produced an easier revival of rehabilitation after transition to democracy. After dictatorship correctionalist experts increased their ascendancy and preserved their authority within prison, which was not identified with dictatorial repression as in Argentina—given the secondary role that prisons had in political repression. However, since the late 1990s correctionalist experts and their programs were progressively displaced by powerful ministers, management experts, and political parties who favored the turn toward a purely custodial prison. The modernized police and reformed criminal courts legitimated this turn toward pure security and facilitated the privatization of the new prisons in the name of managerial standards.

The evolution of prison goals and prison regimes determined, in part, the evolution of imprisonment policies in democratic times. In Argentina, since the beginning of the democratic era, federal prisons have been in turmoil, with recurrent riots, directly related to the politicization during dictatorship. Prison turmoil, combined with the de-legitimation of prisons after dictatorship—given their role in political repression—and the return of pro-rehabilitation experts, lead to initial decarceration policies in the first two decades of democracy. The progressive reduction of prison turmoil—resulting from the intervention of human right’s experts and the (weak) judicialization of prisons regimes—combined with changes in the political sector of the carceral field toward penal populism—initiating a pro-incarceration turn in policies since the 2000s. In Chile, the greater incarceration rates in the late 1990s result from the convergence of initially reinforced correctionalism and quieter prisons during the first decade of transition, and the rise in imprisonment rates following the implementation of the new criminal courts and expanded policing in the last decade. In both cases, the demise of correctionalism, and the turn toward more punitive policies or institutional developments result from the subordinated position of the prison elite-bureaucrats to the interests of the central government within the carceral fields.

The paradoxical return of rehabilitation, (the use of) human rights and the divergent paths toward warehousing prisons in Argentina and Chile

The post-transition carceral system of the federal government Argentina and that of Chile increased dramatically their inmate population in the last decades (see figure 4.1). Right after the transition to electoral democracy (1983 in Argentina and 1989 in Chile) and during the first decade after transition, the carceral population of both Chile and Argentina remained stable or with limited increases. At the same time, even if they were part of administrations that had turned to neoliberalism (in Chile since 1975, and in Argentina, initially in 1976 but even more forcefully since the early 1990s,). Moreover, contrary to what most works on the Latin American prison argue and predict (Iturralde Sanchez 2011; Muller 2011a; Sozzo 2010) neither prison administration drifted straight into pure warehousing—where prison services are concerned with locking down inmates to satisfy the anxieties of insecure late modern societies.
Figure 4-1 Prison population in Argentine Federal Prisons and Chile (1972-2010)

On the contrary in the two decades after the inauguration of electoral democracy in Argentina (1983-2000) and during the first decade of democracy in Chile (1990-2000), political agents and legal and correctionalist experts have been vying to restore or reinforce a correctionalist prison—based on classification and treatment—and to protect the rights and dignity of inmates. The adoption of purely neutralization concerns within prisons and an orientation toward citizens security as an official policy only took place in Chile and Argentina in the early 2000s. It was only then that rehabilitation in Argentina and Chile, as it has happened in the US and UK, was “recodified” (Garland 2001:191) and subordinated to security inside facilities and orienting the prison to pure confinement in both countries. This took place in Argentina and Chile only after the attempts to return to correctionalism had been defeated. In Argentina, prison authorities and political agents, privileging security displaced prison officers and experts privileging rehabilitation. In Chile, rehabilitation, initially codified as a human right in the first years of democracy, was subsequently recodified and reprioritized as a means to produce citizen security through incapacitation and reducing reoffending rates in the last decade. Changes in prison philosophies and in prison regimes, I will show, facilitated the recent turn toward greater punitivism. The doctrines of rehabilitation facilitated and justified the sudden expansion of prison building in late 1990s in Argentina and since the mid-2000s in Chile and the increase in budgets and personnel (see table 4.1.). In the case of Chile, it justified the increase in personnel, which tripled between 1995 and 2010 and the progressive increase in the budget which grows steadily since the mid-1990s. This rehabilitation discourse was also central to preserve the legitimacy of the prison after the return of dictatorship and to make more acceptable the expansion of courts in Chile, which were presented as an ideal means to reduce pretrial detainees and finally make treatments possible within prisons.

To understand the evolution of the goals and programs adopted by prison bureaucracies in democratic times in Argentina and Chile, and understand their central role of facilitating the recent turn toward greater punitivism in both countries, I start accounting for the unexpected re-emergence of correctionalism in a region which has been described as having only intensified the historically purely incapacitating objectives of prison in the region (Müller 2011a; Iturralde 2011). I also account for the ascendancy of human rights liberal demands in the carceral field. Then I explain how these programs were eroded and replaced by purely custodial concerns. I argue in this chapter that, just as with the evolution of the courts and the prison bureaucracies in relation to new models, the historical heteronomy of the prison bureaucracy vis-à-vis the central government is essential for understanding the ultimate weakness of correctionalism within contemporary prisons. In both cases, prisons increasingly privileged security at the cost of rehabilitation and human rights standards. I attribute this common evolution to the similar levels of bureaucratic heteronomy of the prison administrations. Prison administrations were constantly subordinated to the demands of the central government and of legislatures.

Now, to understand the changes in the position-taking of political agents in democratic times, we must also take into account the reality of the prison regimes that they faced and which led political agents to back correctionalism and decarceration at the beginning of democracy and the abandon it later. In Argentina politicians opted for decarceration because, on the one hand the highly militarized prison policies and routines where highly illegitimate, while on the other, they inherited highly tumultuous prisons and they needed to reduce prison populations to reduce prison riots—which reflected the enormous politicization of prisons during dictatorship and the sudden delegitimation of prison officers and guards authority. Penologists that returned to the carceral arena right

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<tr>
<td>Fed. Prison Service</td>
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<td></td>
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<tr>
<td>Personnel</td>
<td>3728</td>
<td>4144</td>
<td>6700</td>
<td>8290</td>
<td>7849</td>
<td>8100</td>
<td>8120</td>
<td>8565</td>
<td>8700</td>
<td></td>
</tr>
<tr>
<td>Prison population</td>
<td>4100</td>
<td>5847</td>
<td>4951</td>
<td>5093</td>
<td>2639</td>
<td>3830</td>
<td>6243</td>
<td>8000</td>
<td>7980</td>
<td>9400</td>
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<tr>
<td>Imprisonment rate</td>
<td>70</td>
<td>97</td>
<td>83</td>
<td>84</td>
<td>45</td>
<td>63</td>
<td>104</td>
<td>106</td>
<td>106</td>
<td>156</td>
</tr>
<tr>
<td>Federal budget share</td>
<td>n.d.</td>
<td>0.48</td>
<td>0.42</td>
<td>0.26</td>
<td>0.49</td>
<td>0.38</td>
<td>0.44</td>
<td>0.47</td>
<td>0.42</td>
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<tr>
<td><strong>Chile</strong></td>
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<tr>
<td>Personnel</td>
<td>2500</td>
<td>3437</td>
<td>4673</td>
<td>4900</td>
<td>5000</td>
<td>5011</td>
<td>8744</td>
<td>10537</td>
<td>14297</td>
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<tr>
<td>Prison population</td>
<td>n.d.</td>
<td>13709</td>
<td>15000</td>
<td>12876</td>
<td>21000</td>
<td>22593</td>
<td>20962</td>
<td>33050</td>
<td>37033</td>
<td>56651</td>
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<tr>
<td>Imprisonment rate</td>
<td>171</td>
<td>144</td>
<td>116</td>
<td>173</td>
<td>172</td>
<td>146</td>
<td>216</td>
<td>228</td>
<td>333</td>
<td></td>
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<tr>
<td>National budget share</td>
<td>0.25</td>
<td>0.26</td>
<td>0.72</td>
<td>0.78</td>
<td>0.7</td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

after dictatorship ended backed their decarcerating preferences, while human rights activists, entering the carceral field to deal with the rights of common prisoners in the late 1980s and early 1990s, diminished prison turmoil by judicializing prison relations. Once the prisons were calmed in the late 1990s, political agents abandoned experts and decarceration stances.

In Chile, prisons have been less politicized during dictatorship, and as a result they were quieter during the first years of dictatorship. The lesser militarization of prisons during dictatorship prevented the sudden devaluation of prison officers after transition while the continuity of correctionalist experts within the prison administration did not lead to an general decarcerating consensus in Chile. On the contrary, all agents of the carceral field backed rehabilitation and tried to implement it within the quiet prison regime during the first decade of democracy. However, the subordination of the prison to the central government plans of creating more and more efficient criminal courts, and the increase in the prison population in the early 2000s, lead to the increase in violence within prison and to the abandonment of rehabilitiation, in practice and discourse within the prison administration, and to the abandonment of decarceration policies by political agents. To understand the traditional bureaucratic heteronomy of prisons, the return or reinforcement of rehabilitation in democratic times as well as the prison regimes of democracy, we need to go back to consolidation of the correctionalist prison in the 1960s in both countries and to analyze the different politicization and militarization of prisons during dictatorship.

The historical heteronomy of prisons permitted the rapid restoration of correctionalist programs in Argentina and the continuity of rehabilitation ideas in Chile, from the dictatorship. Rehabilitation, oriented to reduce recidivism, was preserved at the behest of economists working at the justice ministry in the late 1980s to reduce prison costs. The expulsion of correctionalist experts during dictatorship in Argentina and their permanence in Chile facilitated the initial restoration in Argentina and revival of correctionalism in Chile, which were accompanied with the incorporation of human rights standards within the prison after the return to democracy. The heteronomy of these prison bureaucracies (whether embedded in the volatile Argentine political system, or in the technocratic Chilean one) explains the initial convergence of the revival of rehabilitation after transition, as well as its later demise and the turn to a warehousing model, following the position-takings of the political sector of the field, dominant within the field, which replaced initial rehabilitation and human rights concerns with security concerns and punitive preferences.

### 4.1. The carceral field and prison change and policies in democratic Argentina and Chile

To explain the recent evolution of the prison bureaucracy in terms of organizational goals and prison regimes over the last three decades (1980-2010), I locate prison bureaucracies within carceral fields. This is a field nested within the larger penal field, where bureaucratic, political, legal, academic, and journalistic agents vie for the authority to create and institute prison policies and determine prison priorities (Page 2007:34). The carceral field is located at the intersection of the prison sector of the bureaucratic field (Bourdieu 1992), the political (Bourdieu 2001), and juridical fields (Bourdieu 1987); it neighbors the academic, journalistic, and economic fields. This field gets constituted with
the consolidation of a prison system within the state that becomes focused on punishment and corrections of inmates rather than mere sequestration. This change is correlative of the creation of positions whose occupants are not merely oriented towards political 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” (Foucault 1995:247).

The positions in the carceral field are hierarchically organized according to the control of authority over prison policies and priorities. With the proliferation of correctionalist expertise, the space becomes organized, on one hand, by the opposition between a more autonomous pole, where agents are oriented toward pure penological interests—varying from pure discipline to rehabilitation and a heteronomous pole, where agents are oriented towards extra-penological concerns and operators, such as the government, the press, or private contractors (see Figure 4.3). The outcomes of struggles among these different types of agents, conditioned by their positions and trajectories, shape prisons policies and produce changes in prison bureaucracies.
Figure 4-3 Schematic structure of the carceral field

Juridical Field  Carceral sector of the bureaucratic field  Political Field

+  

Executive Branch  
Legislature  

Crime courts  
Justice ministry  

Penitentiary Service  
Director  

-Treatment Oriented Officers  
-Custody Offcs. (Security Oriented)  

Law schools  

Justice  

Media  

Academic Field  

Juridical Field  Academic Field  

Media  Penological concerns  Order and Security concerns
The analysis of the evolution of the experts and the dissection of the changing relations between the prison bureaucracy and the central-government agents allows us to overcome the heuristic loopholes of political-economy, Late modernity, and Foucaultian perspectives for explaining recent change in Latin American prisons policy goals and prison regimes.

Political-economy perspectives explain the change in Argentine prisons goals as mere ideologies and epiphenomenon, and focus merely on carceral realities (Daroqui and Guemureman 2011) by pointing to prison effects of social marginalization produced by the turn to a neoliberal export-based economy, and the resulting need for an incapacitating institution capable of controlling the marginalized sectors. From this perspective “rehabilitation” programs or goals are ideological devices used to cover up the “real” warehousing function of the prison. However, this perspective cannot explain the rise and demise of such “ideologies” within the same economic regimes, or even recognize cases when that carceral reality is organized along the lines of those programs as it was in the Federal system in the late 1960s. From the field approach, I account for both the preservation of correctionalism in different economic regimes (developmentalism and neoliberal export-oriented) and explain their presence in democratic times. With this perspective, I can also explain the emergence of alternative discourses, and ideologies, including human rights perspectives and managerialism, and explain why on some situations they get incorporated into the workings on the prison bureaucracy and in others do not.

Within the neo-marxist tradition one could resort to Melossi (1995) who, combining Gramsci and pragmatism, suggests 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. In this perspective penal elites’ vocabularies and prison policies are still shaped by economic-hegemonic necessities or, more recently “national cultures” (Melossi 2001). While taking seriously vocabularies and programs, and not discarding them as mere ideology, he does not provide tools to explain variations in discourse within the same mode of production, as well as differences and oppositions between elite politicians, bureaucrats and experts. The concept of carceral field allows to both explain the evolution of prison goals and the vocabularies of motive of prison administration, while it allows us to account for the changing relations and alliances between prison administrative elites, experts and political agents.

Still regarding prison programs, I go beyond Foucaultian approaches that limit themselves to identify in Argentine prisons a “mixed economy of punishment” that contains both “liberal-correctionalist programs” along with “authoritarian” tendencies toward purely incapacitating prisons (the latter exacerbated by democratic politics) (Sozzo 2010). Through the field analysis, I explain the paradoxical reinforcement of both liberal-correctional and despotic-authoritarian tendencies since the return of democracy in Argentina but account for the agents and structural factors that tipped the balance toward privileging security and incapacitation over rehabilitation.

Regarding the changes in imprisonment policies this comparative field study goes beneath that grand narrative of “late modernity,” where socio-economic transformations, hegemonic globalization, neoliberalism, social exclusion, social insecurity, and a “culture of control” extends over Latin America, leading to increased punishment and “violent
and overcrowded prisons” (Iturralde 2011:172). By reconstructing the different positions of political agents and experts and the changing doxa within the carceral fields we can explain the specific evolution of the imprisonment policies even in similar contexts of social transformation and similar demands for greater control. The balance of power relations within the carceral fields during the first two decades of democracy in Argentina and the first decade of democracy in Chile actually deflected political demands for greater use of imprisonment. Changes in the political sector and within the prisons regimes in Argentina opened the door to more punitive policies. In Chile, changes in the political field, and changes in the criminal courts field, which led to the creation of new courts and prosecuting capacities and increased punitiveness there.

This comparative field analysis extends but also refines Wacquant thesis that connects the expansion of the prison within the bureaucratic field as part of the implementation of neoliberal political program (Wacquant 2009b). By dissecting the evolution of prison programs and policies within the carceral sector of the penal field I explain the paradoxical decarceration policies even at the same moment that we observe the full implementation of neoliberalism in the economic and welfare front, as well as the conditions of efficacy of neoliberalism as market conforming state crafting. This attention to the carceral fields, and in particular to their different histories is also necessary to understand the enormous variations in the temporality, intensity and modalities of imprisonment in the region, and indeed in these two countries, like Argentina and Chile. These differences, temporalities and specific causal factors leading to increase in imprisonment rates can not be adequately accounted for by merely invoking the transition to neoliberal economic regimes and the ensuing penal populism as Muller (2011a) does.

4.1.1. Contents

As in the last chapters, I analyze each case separately, dividing the analysis in two stages: (i) an initial objectivist moment covering the period before transition and (ii) a second moment of analysis where I concentrate on the democratic era strategies and struggles of agents and organizations. In the first period, I follow the emergence and consolidation of a correctionalist prison system working close to the (weak) judiciary in each subfield, and I trace the militarization of this prison regime during dictatorship. In this objectivist moment I also trace the rise of correction professionals within prison administrations and their influence on custodial regulation; I illustrate the impact of their presence by reference to the most important establishments within each prison service: the Penitentiary and big Jails of Buenos Aires (Devoto, after 1970 the New Caseros) and the big prison of Buenos Aires (Caseros) and the Santiago Penitentiary and Santiago Prison, which house around 40% of inmates of each service at any time until the mid-1990s. After establishing the development of a correctionalist consensus between 1930 and the 1970s in both fields, first at the level of ideology and tracing the evolution of their practical implementations, I analyze how the militarization of prisons during the dictatorship affected both the correctionalist program and the position of correctionalist professionals. I then analyze the struggles and alliances after dictatorship between the central government, prison officers, and correctionalist professionals that tried to return Argentine prisons to rehabilitation and away from the purely security oriented inherited from dictatorship and tried to reinforce them in Chile. I close by showing how, in both
countries, the progressive politicization of prison policies in more punitive directions weakened the position of rehabilitation experts and of human rights’ activists, within and outside the state. I close discussing how these changes in prison goals and prison regimes, along with the weakening of experts, and the changes in the political sector of the carceral field, led to the greater punitivism in both cases.

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


From the 1930s until the late 1960s, prisons became more centralized within a unified administration, organized within a unified and coherent plan, internally regimented, and increasingly subject to logics developed by correctionalist professionals within the federal government administration. The system shifted from a big-house logic of the 1920s centered in the National Penitenitary and the Ushuaia Presidium to a correctionalist model of the mid-1960s structured around penitentiary complexes, comprising jails, prisons and penal colonies. The advance of correctionalism was punctuated by periods of politicization, where prisons were used for political repression. The militarized officers—steeped in a militarized outlook and techniques based on coercion—progressively eclipsed the correctionalist professionals in establishing prison routines and priorities. By the 1970s, national security doctrine replaced penological know-how, reflecting the ascent of the militarized officer and the direct control of prison by the military. The militarization devalued the correctionalist know-how and the authority of career “treatment-oriented” prison bureaucrats. It also modified the prison regimes, as common prisoners began to be treated in the despotic and cruel ways previously reserved for political prisoners. The militarization of officers and prison regimes, and the replacement of penological standards with political ones destroyed the authority of the correctionalist experts within the prison. The post-transition prison was therefore left exposed, vulnerable to the introduction of new expertise or to an attempt to restore philosophies of rehabilitation or human rights; in particular after the massive devaluation of military know-how in most spheres of the administration after the transition to democracy.

4.2.1.1. From the liberal prison to the penal-welfarist penitentiary complexes

The carceral field 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 doctors colonized and converted a loose archipelago formed by the National Penitentiary, the Capital city Prisons of Caseros and the Devoto Jail, along the the Ushuaia Presidiums, in the far south connecting them explicitly to a correctionalist orientation. The departure point for that carceral galaxy was the Buenos Aires Penitentiary—built in 1877, meant to replace post-independence “barbarous” punishment while controlling mobile farm workers and the expanding metropolis of Buenos Aires. Doctors and legal scholars studied the inmates in the

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1 Fulfilling the 1852 constitutional prohibition of "cruel and unusual punishments," and replaced public executions, whipping, and military service common punishment since the 1850s (Caimari 2004:23). The
Penitentiary as early as 1888, and after adopting Italian positivism, created the Institute of Criminology in 1907. When the dreams of a "prison-factory" turned into a nightmare "warehousing prison" (Caimari 2004) in the late 1890s, medical doctors and positivist criminologists, legal scholars and judges turned the system away from utilitarian legal conceptions, and made it into a place for discipline, education, and work. If, by 1910, the prison was in the charge of “a professional corps of wardens, a group of doctors, the chaplain, teachers and master artisans all sharing the responsibility of reforming prisoners” (Salvatore 1996), “most institutions remained untouched by the winds of reform before 1930” (Salvatore 1996: 217).

Only after the 1930s did the federal prison system expand and become organized around a progressive regime, where prison officers and medical doctors trained in criminology extended their hegemony throughout the organization. The conservative administrations between 1932 and 1943 fostered the expansion of the correctionalist criminological know-how. In 1933 the government passed the Organic Law of Carceral Organization and Punishment Regime, followed by a new wave of prison-building of “big houses” and penal colonies (Caimari 2004:121). After passing of Law 11,836 between 1933 and 1940, the conservative administrations created eleven new prisons, including penal agrarian colonies and expanded labor facilities within the old ones. Within them authorities introduced treatment programs4 oriented to recover workers for the incipient import-substitution-industrialization and to control the growing numbers of internal immigrants. The General Directorate of Penal Institutes nationalized the classificatory system created in the Penitentiary and established the Institute of Classification, so as to classify inmates for treatment.5

During the 1930s and up to the mid-1940s, legal scholars, doctors, and penologists trained in criminology controlled the prison directorate displacing police officers and military men.6 These professionals followed a positivist criminology,
creating a national association in 1936—the Argentine Society of Criminology—that would recruit new members and disseminate their views.\(^7\) By the early 1940s, central-state officers, like the ministry of justice, penitentiary directors, and judicial authorities, shared the new correctionalist consensus. By the early 1930s “the ideal of the ordered, modern and scientific prison confirmed its presence at the heart of the state” (Caimari 2004:123), and in the next decades it would start to be followed in practice.

But 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—became increasingly preeminent within the prisons. By the mid and late 1940s, prison guards began to share power with the legal and medical professionals, and progressively acquired a greater say in prison policies. Under Peron’s first presidency in 1946, the ascending prison guards eventually took control of the National Prison Directorate, and a former director of the Ushuaia Penitentiary, Roberto Pettinato, became director.\(^8\) Still, the correctionalist professionals (criminologists, medical doctors and lawyers) and the treatment oriented prison officers kept an important quota of power within the bureaucracy. Deputy-director Juan Carlos García Basalo, also a career office but with an orientation toward treatment, was backed by the members of the Society of Criminology. García Basalo, instead of investing in political contacts, as Pettinato did, invested in studying, translating, participating in international penological conferences—he read and spoke English, French, and Portuguese, and was responsible for systematizing and giving penological basis to most of the legislations of the next five decades: the penitentiary acts of 1947, 1958, 1973 and 1994.

In line with Peron’s corporatist regime, prison officers and rank and file guards as well as liberal professionals, were all converted into “penitentiary corps.” In 1946 they were renamed “security and defense officers” and were given their own officers’ academy to “train cadets, perfect officers, and inform senior officers,” (Aftalion and Alfonsin 1949:137).\(^9\) In 1947 the “penitentiary corps” was separated from the correctionalist professionals (the doctors, psychiatrists, and lawyers, which came to be distinguished from the former and called “technical corps” (Decree 35,758 of 1947).\(^10\) During the late 1940 and early 1950s the penitentiary corps upheld the view of the prison as a space of correction through classification and treatments,\(^11\) but mixed it with catholic

Aires, the director of the Reoffenders National Registry, and the director of the Penitentiary Psychiatric Annex,” (Act 11.833, Chapter 10).

\(^7\) Law professors, professional doctors, justice ministers met with the prison administrative elite in the association. In 1938 they organized an international criminology congress consolidating an almost decade long process of advance over criminal justice institutions (Salvatore 2002).

\(^8\) Pettinato was an highly executive officer, and loyal follower of Peron, that went form Ushuaia Prison, then to Direct the National Penitentiary—the most valued executive position—to become general director in 1947.

\(^9\) They also had their own social security program, salaries assimilated to the level of the also corporatized Federal Police, and the celebration of the penitentiary officer’s day (Caimari 252-244).

\(^10\) The decree of 1947 left in place the old Institute of Criminology, but as “a liaison organ between the general directorate and the national and international scientific societies and congresses”(Aftalion and Alfonsin 1949:136), not as an effective internal organ directing routines.

\(^11\) Officers followed the correctionalist program, even if they favored “discipline, education and labor,” while professional medical and legal scholar followed abstract theories (Caimari 2004:107).
humanism and Peronist doctrine, all the while their training was being suffused with military rituals and their relations organized along military-like hierarchies.

Within this corporatist, militarized and politicized prison inmates were considered part of the working class, the people (pueblo), and were treated as “inmate-workers.”12 Almost like a microcosm of the larger peronist corporatist society, where military men guided the working masses, the penitentiary corps adopted military hierarchies and rituals.13 This militarization of forms meant at the same time an heteronomization of the prison administration, which was politicized and instrumentalized by the executive branch, who was both a military officer and the leader of a political movement. These culturally militarized penitentiary corps participated in political repression during the Peronist regime (1946-1955) where political opponents where imprisoned after being tortured by the police (See Nudelman 1960, in particular pp. 323-444). Though the National Penitentiary presented itself to the world as a model of a fully humanized and modern prison for common prisoners subject to classification and treatment, psychological torture, hunger, and abuses of political prisoners were routine, reflecting the bureaucratic weakness of the prison administration and of the judiciary, as we saw in the last chapter14 Peron also reinforced the participation of catholic priests, giving a religious color to the work of the prison corps, reinforcing religious assistance in the “correctional treatment,” and introducing catholic rituals such as masses and parades (See Pettinato 1950). In this period, prison inmates, and the working class more generally, developed a sense of entitlement. Demands for recognition of their dignity would be determinative in the following decades, when the militarized officers would begin treating common inmates as political prisoners.

4.2.1.2. The implementation of a correctionalist program amid the use of the prison for political repression (1930s-1971)

It was only after the fall of President Juan Peron, between 1958 and 1971, that the federal prison system turned progressively oriented, in discourse and practice, towards rehabilitation through indeterminate sentences, and through classification and treatment

12 Now “penological” experience and models were accompanied with health insurance, on the job accidents insurance coverage, sports and patriotic celebrations by inmates, which were part of the political propaganda of Peronism (See Cesano 2010).

13 In 1946 penitentiary agents become part of the “armed forces” (Decree 12,351 of 1946) and the penitentiary corps acquired military training, as the officers schools “satisfies the requirements to be considered instructed soldiers…constituting the reserve of each class.” (Dirección General de Institutos Penales 1949)

14 The House of Representatives members denounced the schizophrenic duality between a scientifically legitimated prison that also worked as political prison, asking “How can the government explain that while in the prison of Las Heras [the National Penitentiary] which is exhibited to foreign visitors, and the officers responsible for the regime give talks in national and international conferences pointing to the Argentina Prison system as a model, the political detainees are subject to a rigor that is not even acceptable for common criminals?” (Nudelman 1960:357) The prisons of Peron’s government were not the first ones to house political prisoners. Just as anarchists and radical liberals have been imprisoned at the turn of the century and beyond since the 1930s, communist, radicals and then socialists and union opponents were the target during Perons’ administrations (1945-1955). The Buenos Aires Devoto Jail controlled by the police was also used as a political prison (see Caimari 2004).
of inmates. These developments, however, were always accompanied by periods of political instrumentalization of the prison, which constantly interfered with the institutionalization of the correctionalist program. The correctionalist prison became fully implemented only when the dominant political agents opted for a correctionalist prison in the second half of the 1960s. But as the political field became more polarized and violent in the early 1970s, the correctionalist program was again progressively eroded, until it was finally discontinued in mid-1970s.

In the carceral field of the late 1950s to the early 1970s, powerful custody officers and correctionalist professionals acquired a similar share in the authority over prison policies. They joined the legal scholars in prison policymaking. Penitentiary officers, among them the prolific penitentiary officer and “penologist” Juan Carlos Garcia Basalo, and army officers, wrote the National Penitentiary Act of 1958. Absorbing inputs from the medico-legal community of criminologists, legal scholars, doctors, and judges the 1958 Act regulated a progressive treatment regime. The law also mandated minimum standards of dignity and brought back judicial control, as judges were authorized to inspect prisons, had to be notified of removals, illness, and deaths, and participated in authorizing early releases, transitory releases, and conditional liberty. The correctionalist program embodied in the 1958 law began to be implemented only after the fighting and repression in the political field temporarily subsided between 1962 and 1971.

In the period between 1958 and 1975, Army officers occupied the prison directory most of the time, and gave greater power to the culturally militarized penitentiary corps than they did to the professional and technical groups. The militarized custody officers militarized the prison every time their political masters, civilian or military, enlisted them in political repression. In the early 1960s, President Frondizi launched a counter-insurgency plan to fight political opponents, namely the Peronist unions. This time political detainees received a special status for those “detained under order of the national executive”—a category that would become more and more popular in the next decade. After the state of emergency ended, Army personnel remained as directors and the

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15 The treatment was structured in a progressive regime consisting on three phases (observation, treatment and trial) and was accompanied by an “integral treatment,” where “merely medical, psychological, social or penal treatment are part of the past […] overcoming the correctional empiricism” (Dirección de Institutos Penales 1958)

16 The Statute of the National Penitentiary Personnel (Act 14,515) passed in mandated that only those officers that pass through the penitentiary officers school could reach the higher echelon of General Inspector, the “technical-professional” liberal professions and disciplines: lawyers, doctors, social workers and teachers, who can only be Prefects.

17 They also kept their corporatist “penitentiary status” (“estado penitenciario”), which implies obedience to the law but also moral and social duties, (i.e. the following a decorous conduct within and outside the service, or a “firm but respectful manners with those under his control, respecting his human rights” (ch. III, paragraph (d).

18 The Internal Commotion Plan (Plan CONINTES), was a state of emergency plan, inspired in French counter-revolutionary colonial warfare (Summo and Pontontiero 2012). The plan authorized the armed force to detain citizens and try them in military courts.

19 The directors also introduced special pavilions for detained in the National Penitentiary, reopened the Ushuaia Prison—closed for its inhuman conditions, and at the Caseros Buenos Aires Jail to house political detainees (Dirección Nacional de Institutos Penales 1960). CONINTES plan measures included reinforcing the protection of the building from outside attacks, and increased the power and zeal of guards against external attacks
penitentiary corps officers monopolized the Advisory Administrative Council, a body in charge of deciding the policies within the prison administration.\textsuperscript{20}

Dominated, the correctionalist professionals began combating the militarized prison regime by denouncing the abuses and the military methods used for dealing with common prisoners. After an inmate mutiny in 1962 at the Devoto Jail where a “squad” of prison guards killed riot ring leaders after they had already surrendered, the correctionalist experts and their allies in the judiciary reclaimed their control over prison policies.\textsuperscript{21} The crisis that followed the riot and the killings allowed the return of the correctionalist experts. Two days after the massacre, the president created a commission of judges and lawyers to “propose solutions to growing criminality.” The commission recommended reducing the use of the prison, but also proposed better prisons with adequate penological treatment,\textsuperscript{22} giving penitentiary treatment oriented officers and directors a central role in them. Following the commission report, President Frondizi launched a plan to build criminal courts, expand the prison infrastructure, and implement the progressive regime ordered by the 1958 Penitentiary Act. The plan also increased criminal courts in the capital and change in the criminal procedure to reduce pretrial-detainees following the Cordoba criminal procedure model.

\textsuperscript{20} When in 1962 the General Directorate was reorganized, with five Directorates (Personnel and Security, Administration, Correctional Treatment, Criminological Classification, and Industrial Exploitation) only the directors of these directorates formed the Advisory Administrative council leaving outside the judiciary and legal scholars from the Buenos Aires Law School, who have formed part of it since the 1930s.

\textsuperscript{21} On December 18\textsuperscript{th} 1962 at the overcrowded Buenos Aires Jail of Devoto, after a mutiny has been put down and nine guards had been killed, the rioters capitulated after a judge guaranteed their lives. Late in the night a platoon of guards took the “prisoners out of the hands of the judge and killed them with their bayonets”(See Dirección Nacional de Institutos Penales 1966:453–467).

\textsuperscript{22} The commission respected classification “to reduce internment to a minimum, only to the level necessary with social defense. Reciprocally, when necessary, custody should be prolonged, to study the personality of the condemned, his evolution, and objective proof of having acquired working habits and control of his antisocial impulses” (RPP, 1962:215). These policies were still based in conceptions of “social defense criminology” and the doctrine of dangerousness produced in the 1940 and 1950s. The commission suggested conditional sentences to those who “were occasional criminals, where no relevant dangerousness would be detected”(217).
The criminal courts of the capital would be housed in a modern building with an architecture that reminded one of the recently inaugurated Brasilia. Besides the portentous and functionalist building of the courts a state-of-the-art-prison for pre-trial detainees would be built. It was inspired by the latest US prison architecture. It was a mixture of the Los Angeles County Men’s Jail and the 1957 Brooklyn House of detention. In 1960 the horizon was that “by 1965 the new criminal procedure would be in place. The architects decided to put the criminal courts on the right side, “not only for reasons of hierarchy, but because it is the site that has the greater number of visitors” (“Memoria descriptiva de la carcel de encausados, RPP, XXIV: 403-412).

The correctionalist program began finally to be more than just discourse and blueprints since the early 1960s. In many prisons controlled by the Federal Penitentiary Service, like the “model prison” of Coronda, in the Western province of Santa Fe, some prisons housed only convicts, which were classified according to their behavior and probabilities of rehabilitation in different cell blocks. In those prisons the regimes was highly isolated from the outside, regulated by prison guards, with relations highly formalized, and almost total occupation by inmates.” (See in particular Fernandez 1975:29–30). This correctionalist prison model was extended throughout the whole federal prison system between 1962 and 1971.
The expansion produced the confrontation between two factions of prison officers within the prison administration: the reformists, treatment-oriented “soft” officers, and the more conservative, violent, the “tough” group, who controlled the Devoto Jail (Del Valle and Salomone 1996:72). The “softs” prevailed over the militarizing tendencies until the early 1970s, when they suddenly lost power. Until then, between 1965 and 1971, the “softs” implemented a coherent correctional system, reduced overcrowding, enforced inmates labor, improved treatment, and imposed highly ordered prison regimes in most prisons and even the gigantic jails.

Despite political changes, after Frondizi left in 1962, President Guido and President Illia continued prison-building. Rehabilitation programs based on the correctionalist program gathered full speed under the military regime that began in 1966. In the first five years of the authoritarian government of General Ongania, more prisons were built and the progressive regime was extended to all of them. A retired military officer, Colonel Paiva, became Director, and he favored the “softs”. He was seconded by Juan Carlos Garcia Basalo. Garcia Basalo, the penologist and penitentiary expert, became general inspector in 1965 and Deputy-Director in 1966 (BPP 1966). Paiva was also seconded by the Director of the Devoto Jail Roberto Almaric (Del Valle and Salomone 1996:63–69). Retired Colonel Paiva “was enthusiastic, hyperactive, overwhelming; he was frantically engaged in the choir of turning the old Directorate of Penal Institutes into a model organization—“the best of Latin America” (Del Valle and Salomone 1996:163). Paiva’s disciplined dispositions converged with Garcia Basalo’s organizational capacities and long term perspectives, as well as his encyclopedic penological know-how, and in less than five years they finally implemented the correctionalist regime in the federal prison system.
Figure 4-4 Argentine federal carceral field 1968
Within the grand “National Development and Security Program; Section (b) Interior, Subsection (3) Justice” technocratic program of General Ongania government, the prison authorities extended the correctionalist programs centered in judicial and criminological classification and treatment through vocational treatment in 1967 and reorganized the prison system into penitentiary complexes.\(^{23}\) Criminology offices classified and treated inmates in those penitentiary complexes.\(^{24}\) The correctionalist program reached even the highly overcrowded and violent Jails of Buenos Aires, which were conquered by the “softs” in the late 1960s.\(^{25}\) The government increased “beds” and space in these jails and classified inmates according to their criminal careers and ages. In 1966, the penologist-officer Garcia Basalo, then Deputy-Director, implemented a regime intended to avoid “what sociologists called prisionization” (Inspector General 1966).\(^{26}\) Classificatory practices were extended to pretrial detainees and prisoners on remand in Jails, who were categorized “according to ages, offence, recidivism, and dangerousness.” The advance of the correctionalist prison was also followed by changes in the training of officers and subordinate personnel.\(^{27}\) Penologist and deputy-director Garcia Basalo

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\(^{23}\) The prisons and farm-prisons in the north, center and southern parts of the country were turned into “Penitentiary Complexes” that encompassed maximum, medium and minimum security level establishment within them.

\(^{24}\) Within each prison the “Criminology Service,” following “anthropological and “sociological criteria” classified inmates and decided their treatment. Anthropological diagnoses continued the medical state expertise (hereditary diseases, somatic constitutions, neuro-endocrine, psychic functions, and typological diagnosis), while the sociological diagnosis inquired about family, personal, social, police and judicial conditions along with a “social survey” by social workers. In 1970, they were present in the Northern, Center and Southern Penitentiary Complexes, and in the Buenos Aires Jails (Director Nacional SPF 1970), with “interdisciplinary groups” (medical, security, teachers, priests). The National Directorate also put in place Early-Release Commissions, staffed with lawyers and social workers, that reported on the convenience of early releases.

\(^{25}\) In a 1965 study of the Buenos Aires Caseros Prison, and the Buenos Aires Devoto Jail—housing two thirds of federal prisons inmates (1,200 Caseros and 1,500 in Villa Devoto, with 80% of them detainees on remand)—legal scholars Neuman and Irurzun describe the Caseros Jail, even if housing a greater number of pre-trail detainees as having “a certain classification of the population and a better order” than the “Devoto Jail” “highly overcrowded, violent and despotic. In Devoto the treatment was rigid, violent. A group, called “the gang” (“la patota”) irrupt with big sticks, like baseball bats and strike the inmates. Indeed, we find there...officers with military dreams that would punish the prisoners with calisthenics, uplifts, even getting them nude in the cold nights. If in [Caseros] there is something like a calm severity, in [Devoto] severity is combined with harshness and cruelty” (Neuman and Irurzun 1979:41–44). “Soft” Almaric was responsible for the “calm severity” at the Caseros Jail.

\(^{26}\) Between 1965 and 1970, the Caseros Prison, reduced its population from 1,200 to 700, reduced pretrial detainees from 80% to 40% and reached zero-overcrowding. In the same period, and reflecting the advance of the “softs” under Almaric, Devoto Jail duplicated its housing capacities from 850 to 1,500, and began to receive only prisoners on remand. A convict imprisoned since 1957 to 1971, remembers the changes in the prison as “great time! He [Almaric] transformed it, he did an excellent administration, sports, everything..., he improved the food, the visits, ..it was something never seen before, extraordinary, you see?” (in Isla and Valdez Morales 2003:279)

\(^{27}\) The prison guards (“carceleros”) now received nine months of initial training instead of two. Officers’ courses since 1967 were centered on criminal, procedure and administrative law, along with the progressive correctional regime and administration of the service. Officers from the penitentiary corps even began participating in academic criminology congresses and created their own annual conferences Since 1967 the Penitentiary Service organized yearly technical conferences (1967: education and spiritual assistance; 1968: Health; 1969: Penitentiary Social work, and 1970: Correctional Treatment), while the Annual Instruction Plan included systematically all these penological topics (BPP 12.18.1967). In 1970 a research and
summarized this period as one of “systematic reactivation of the progressive regime, through a triple action”: “(a) legal and administrative regulation; (b) “indoctrination (“mentalización”) of personnel, and (c) integration and renovation of physical infrastructure (García Basalo 1975). By 1969, penological experts and students from Brazil and Chile, like Marcos Gonzales Berendique, visited the facilities and reported back home on the “reform movement in the Argentine Prisons.”

The consolidation of the correctionalist prison was accompanied by the expansion of criminology expertise in prisons, reformatories, hospitals, detention establishments, and criminal courts. In 1967, the Buenos Aires School of Law created a Criminology program. In that epoch, Elias Neuman, a reputed legal scholar and criminologist who studied the prison was “persuaded that in the near future detention and custodial establishments will be transformed into scientific institutions with personalized criminological treatments. This criminology, with its interdisciplinary take will finally put a dike to the blind vindictive and retributionist criteria of punishment” (Neuman 1970:148).

Criminologists and legal scholars also started to dispute the hegemony of “clinical criminology” within the prison and proposed a “sociological criminology” that would inform prison policies and criminal policies within the grand program of national development (Roberto Bergalli 1982c).

The formal correctionalist programs in prisons coexisted initially with a stable inmates’ code that was progressively eroded by the same advance of correctionalism. According to the few descriptions of the period, order was kept through sanctions and also violence, but depended on a prisoners’ code tied to a hierarchically ordered society of captives, with professional thieves (“gratas” or “heavy weights”) and “old criminals” at the top. In general, this order was less violent, and many groups collaborated with guards. In the 1960s, the prison officers took over the resistant “heavy weights,” who

implementation center was created. See “Curso de Aplicación de oficiales (instáurase en forma definitiva y se aprueba reglamento”, “Curso reglamentario para el ingreso del personal subalterno en el escalafón penitenciario,” and “Créase la división Estudios y Coordinación” in Revista Penal y Penitenciaria XXIX:296, 309, 318, 324.

On 1969 Argentina hosted the regional meeting of the Fourth United Nations Congress on Crime Prevention and Inmates treatment. The representative of Panama, compared the Argentine system with that of the US, and observed that “Argentina is one of the most evolved national in the treatment of inmates. I witnessed how inmates are respected and treated like a human being. I do not think that even in the United States you will find a regime like this one.” The representatives from Sao Paulo also made a complete report of this evolution and proposed it to be adopted in Brazil. See “Inaugúrase la sección de régimen abierto de la Colonia Penal de Presidencia Roque Saenz Peña-Chaco” in RPP (XXIX:331-335).

By 1969 prison penologists from the Penitentiary Service dialogued with legal scholars and judicial authorities the International Criminology Congress in the city of Mendoza agreeing about the centrality of criminology to orient penal policies and its necessity to complement it with penological knowledge in prisons. See “XIX Curso International de Criminologia (22-28 June of 1969, Mendoza, Argentina” in RPP (XXIX:74-80).

Beneath them one found the “light weights” oriented to white collar crime and less prone to violence. Beneath these elites come the “dums” (“giles”), first-time criminals not respected, who serve the elite, in particular the gratas, and where protected by them. The lowest level was occupied by rapists, minor abusers, and pimps (Neuman and Irurzun 1979:53-64). Within this society internal cliques form around “eating and mate brewing” called “ranchadas”, each including prison elites and servants. The elites controlled the pavilion, with gratas resisting order and “older criminal” abiding by the rules (“doing conduct”) to leave earlier and avoid problems. The ranchadas of “dums” and the “lights weights” also collaborated with the guards exchanging favors.
were “weakened by the administration, physically and psychologically,” isolated, and progressively replaced by a “nouvelle vogue” of younger and more violent delinquents, who did not respect the “gratas” and the prisoners code and order (Neuman and Irurzun 1979:53-64).

As we can see, in the late 1960s, the federal prison system was organized around corrections and the rehabilitative consensus was shared not only by prison officers—both custody and correction officers—but also by members of the legal academy and the judiciary and by agents of the political field. These correctionalist prison programs and regime was weak and depended from the external backing of political agents to survive. With the return of political polarization and violence in the political field in the late 1960, this consensus began to crack. Political polarization brought, in turn the full militarization of the prison, which became “units.” The old criminologists were excluded from policy circles, and correctionalist routines of classification and treatment were abandoned or preserved symbolically to control political prisoners.

4.2.1.3. The militarized prison under dictatorship: counter-insurgence and militarized corps

After 1970 the prison shifted its focus from correction to internal order and political repression, in a process that would become even more evident in 1972, eventually destroying the correctionalist programs and prison regime. The “softs” were removed, and the “toughs” regained power. The toughs, or security oriented officers had preserved power positions during the 1960s, and began putting in practice their security-oriented perspectives within the prison regulations, routines, and training. Still during the late 1960s they had a subordinate position. Their military training and outlook was suddenly re-valued in 1971 when the Army acquired operational control over prisons housing detainees for “subversive activities” (Law 19594 of 1971). Since then, and for the next decade (except during a brief period under Peron), the military, controlling the executive branch, imposed a new security-centered prison model geared towards the repression of political dissidents.

As we saw in the last chapter, beginning in 1971 the military government increased political repression by introducing special courts and converting some prisons into maximum-security prisons. The creation of a special court to deal with “Subversive Crimes,” increased political detainees within the federal prisons, at the same time that

31 In October 1971 the reformist Director Miguel Paiva left and the next year the “softs” Juan Garcia Basalo, and Roberto Almaric retired after a “bitter fight with the toughs” (Del Valle 1995:53).
32 The return of the “toughs” had began slowly after the political crisis of 1969 in the Ongania regime when the government faces protests in many cities of the interior and become stronger in June 1971.
33 In 1967 a reform of the penitentiary act declared that the General Directorate was “a security and defense technical organization in charge of the custody and reform” (Act 17,236) and directors organized a Security Division (BPP, 5.1.67). In 1969 security divisions were created within the penitentiary corps, with “security exercises” introduced after July 1969. In 1967, shooting training was regulated (BPP 4.24.1967) and then generalized (BPP 4.27.1967). Finally in 1968, a program of “Professional Security” training was established (Special Public Bulletin 626, Decree 8159/68, in BPP 4.1976). In the Officers academy cadets were taught that penitentiary officers were part of the security forces of the nation.(Alexander 1969:21–26).
34 They went from 500 in June 1969, and grew to around 1,100 on mid-1972 (D’Antonio and Eidelman 2010:97).
the military took director control those prisons housing “maximum dangerousness political prisoners.” This militarization and focus on political crime continued through 1973 when President General Lanusse changed the general prison statute (Law 20,416), mandating that active-duty military officers commanded the service (chap. 10), changing the name from Directorate of Penitentiary Institutes to “Federal Penitentiary Service” (SPF). Prisons became “units” and regional complexes were placed under central control. The SPF continued having a “General Advisory Council,” but now it was composed by the Directors of “Intelligence,” “Corrections,” “Administration,” “Technical Assistance” and “Labor,” again excluding legal scholars and judges.

The massive housing of political detainees changed prison routines and regimes, but also collective views about prison. Lawyers assisting political detainees used the judiciary to obtain releases or improve the situation of detainees, but also documented the harshness of the regime. Political prisoners also organized themselves inside prison and questioned the authority of guards and the abandonment of the correctionalist program. Political repression and the special treatment of political prisoners also permitted the emergence of organizations oriented towards defending the rights of political detainees, thereby introducing critical human-rights language to describe prison’s abuses and biases (Foro de Buenos Aires por la vigencia de los derechos humanos 1973). Some of these lawyers became human rights activists in the early 1980s (Vecchioli 2009).

Outside prison, younger legal scholars-criminologists like Roberto Bergalli, who until 1970 had proposed developing a “criminology for national planning” integrated within the national development plans of the government (Bergalli 1982c), began criticizing the prison administration, pointing to the inconsistency of special regimes for political detainees existing along a correctionalist program (Bergalli 1972). Political activism and criminological critiques began to produce disenchantment with the correctionalist program among legal scholars, criminologists, and political circles.

The return of democracy in mid-1973, under president Peron, produced a brief return of correctionalist concerns and experts, but did not stop the militarization of the prison. The 1973 transition to democracy revealed the increased politicization of the prison: Most political detainees where freed through an amnesty after prisoners’ rights organizations and political groups pressured the incoming government. But along with

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35 The units under military control were initially those of Chaco, in the far north (Unit 7), that pertained to the North Penitentiary Complex and the recently created Rawson Prison (Unit 6). In those prisons a Regulation for maximum security detainees was passed and applied. This regulation established limited contact with legal counselors, lesser medical attention, limited reading, reduced free time, and a stringent internal regime that produced severe mental disorders.

36 The 1973 Act also militarized the force assigning “penitentiary agents the security and defense functions assigned by the direction” (ch. 30), being mandatory for penitentiary agents to “use uniform and weapons.”

37 These early human rights activists obtain concrete triumphs like the closing of a prison on an old war boat in 1972 (Foro de Buenos Aires por la vigencia de los derechos humanos 1973:95)

38 For a description of the organization of inmates, continuing the fights again political repression of peronists in the late 1950s, the communists in the 1960s and “subversives” in the 1970s see Seveso (2009).

39 There was not much inconsistency at the level of categories—“maximum dangerousness” inmates was part of prison lexicon and maximum security prisons was a category that went back to 1938, while the notion of “subversive delinquent,” extended the notion of “criminal gang” or organized crime, or “multiple authors” crime developed by legal experts since the early 1960s. It was the regime and the general aim of the prison that changed directions and that criminologists excluded from the administration and policy circles denounced it.
the political prisoner, common prisoners were also freed. The human rights critiques began eroding the consensus about the prison as as site of rehabilitation, a critique shared by younger criminologists, portraying it instead as a site of oppression. Meanwhile, inmates began to be less obedient and docile towards prison authorities. Those not released engaged in riots and hunger strikes, further politicizing the population of non-politically involved detainees. The attempted comeback of penologists and criminologists was buried under the political fights and the instrumentalization of the penitentiary to fight government opponents.

As violent clashes between radicalized leftist groups and right-wing paramilitary groups—backed by the government and the Federal Police and the Army (Ch. 2)—increased, the penitentiary service was enlisted in this fight. After Peron’s death in 1974, the Federal prisons were fully integrated into the political repression apparatus. In the following nine years, between 1974 and 1983, security and counterinsurgency orientations eclipsed all trace of the consensus around rehabilitation. After March 24th, 1976, when the military deposed President Isabel Peron, the penitentiary officers and subordinate security specialists increased their number, fully adopting a counter-insurgency logic for the prisons.

A Retired Colonel, Jorge Dotti, became General Director and made “security” the core concern of the prison administration, both organizationally and in doctrine. In each prison, the director, the security chief, the administrative deputy-director, and the chief of intelligence constituted “Security Commands” that decided on possible scenarios for internal and external security threats. Within the counterinsurgency framework, prison units and pavilions become “theatres of operation” and the service became part of a “war against subversion,” led by the military commanders that directed the prison administration. To wage this “war,” the prison service increased its personnel by almost

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40 More studies are needed, but in 1973 the correctionalist prison began to be criticized by human rights groups, Criminologists, even if they made a brief comeback also engaged and discussed the criminal policies of the Peronist government, regarding in particular the illegitimacy of continuing focusing on common crime, and the need to study white collar crimes (See Bergalli 1982c). Some even began studying the duration of criminal trials and adjudicate between legal conceptions that favored short sentences and those advancing demands for longer periods to achieve “rehabilitation” (See Tozzini and Arqueros 1978).

41 In early 1974, the government of Isabel Peron, who replaced Juan Domingo Peron, turned the Rawson Security and Rehabilitation Center, built in 1972 into a “Maximum Security Prison for dangerous delinquents.” On December 1974, the government routinizes their situation with a regulation for “maximum security delinquents” that imposed even greater restrictions to legal aid, visits, medical care, readings, communication and inmates organization (Decree 2023). This new regime was applied over the growing number of political prisoners—from June 1973 to May 1974 political prisoners went from zero to around 100 and after Peron’s death in 1974, they reached 2000 by March 1975, and to around 5,000 on December 1975 (D’Antonio and Eildelman).

42 An year after the coup, Director Colonel Dotti, commemorating the Penitentiary agents´ days in 1977 declares that “the Penitentiary Service, just like the other forces assumed the responsibility of fighting subversion, and even housed subversive elements, that has obliged [the service] to get out of the normal cannons, accommodating our structure and operations to the specific modalities of this new and dangerous enemies of society.” […] Colonel Dotti also announced that day that “the defeat of these elements [was] a fact, and in military terms, the troops now operating [were] persecuting the dispersed remnants of the dispersed enemy” (BPP 6.16.1977).
1,500 subordinate officers from 1976 and 1978.\textsuperscript{43} Counterinsurgency knowledge became part of the officer curricula.\textsuperscript{44} The re-orientation towards security originally targeted political prisoners, but it soon was extended to common prisoners. Meanwhile, old prison “treatment” devices began to be applied to political prisoners. The 1974 regulations for political detainees, originally limited to a few prisons, were extended by order of the Executive branch (Decree 955 of 1976) to all prisons housing political detainees, creating special dossiers for each of them (Public Penitentiary Bulletin (BBP), 11.8.1976).\textsuperscript{45} These dossiers extended traditional penological classificatory practices to political detainees, evaluating their “dangerousness and potential for rehabilitation.” And now, instead of being used to justify the early release of prisoners the categories and evaluations were used to secure the permanence of the political prisoners in the prisons, or to regulate their access to the new parole system implemented for political prisoners on the night before Christmas, on December 24\textsuperscript{th} 1977.

The regime for special detainees implied the utmost of regimentation, allowing for a generalization of abuses by guards.\textsuperscript{46} This despotic use of punishment and regulations was extended to common prisoners in four particular ways: (a) Guards and officers used the regulations to impose arbitrary sanctions, (b) they denied prisoners the right to petition collectively (c), security criteria determined prisoners’ access to labor, and (d) “any insinuation of a demand or organization within the prison was violently

\textsuperscript{43} Custody and security specialists grew from 48% to 56% of officers between 1975 and 1978, and 60% in 1982, while administrative officers, in charge of management, diminished. In the subordinate ranks the security personnel increased even more. From 3,356 in 1971 they were 5,315 in 1973, 5,824 in 1975, and they get to 6,600 in 1978, and go all the way to 7,300. Within subordinate sectors, security guards become more numerous (78% of the subordinate personnel in 1979). This group, that duplicated in five years, was formed by young males incorporated after a two months course and trained in general security procedures within counterinsurgency logic (Source BPP).

\textsuperscript{44} On February 1976, a month before the coup, Retired Colonel Julio Arana, and counterinsurgency experts teaches “Security and Defense Courses” to the High Officers retraining cohort of 1976 (BPP 1078, 3.1976). The monthly conferences for 1977 discuss “Forensic Medicine” and “Compared Penitentiary System”, but also “national security” and “ethics system,” “contemporary penitentiary problems” and “Intelligence.”

\textsuperscript{45} This dossier inquired name, ID #, address, date of entrance, but also about very specific questions: “Place of birth, studies, profession, religion, ideology, social origins, marital status” reflecting a change in relevant aspect, where “religion” and “ideology” become central.

\textsuperscript{46} This generalization can be followed in the memories of the political prisoners. Carlos Zamorano, who was detained in 1974 reports that Guards that respected inmates at the Buenos Aires Devoto Jail on December 1974 (Zamorano 1984:74) incremented their violence and despotism in early 1975 under the democratic regime. The Guards increased their despotism with political detainees arbitrarily punishing inmates, political or not. Minute punishment are used to build the dossiers. Under the parole regime those released had to report themselves periodically to military, police or penitentiary officers, and “abstain to participate in meetings, public or privates one, of any character, except family reunions.” The same principle of surveillance and isolation will reign between 1976 and 1979 as regimentation and oversight reaches new heights within the political prisons. The intensified isolation and arbitrariness will produce severe psychological and bodily damage, but also reactions by the inmates to counter the destructive effects of the regime See Gavensky and Wagner: “Detenidos Políticos: el espacio como alternativo de violencia (1974-1976)” in Rodríguez Molas (1985:246–254) about the psychological and medical effects and the ways in which inmates countered isolation and regimentation through different creative and artistic activities.
uprooted.” (Barberis 1991:54). Killings of “fake escapees” became common, and inspections became more violent, some ending in massacres.47

As traditional “treatment oriented” officers retreated, religious experts and medical doctors increased their power within the prison and preserved the vocabulary of rehabilitation giving it a religious declination combined with the counterinsurgency views.48 Catholic priests espoused a catholic doctrine, thereby religiously legitimating officers’ and guards’ violence, declaring them to be the vanguard of a crusade. As in the armed forces (Ranalleti 2009) and the police (Hathazy 2012; Peregrino Fernandez 1983), counterinsurgency in the prison system was intertwined with Christian views of restoring an organicist society, and of regenerating inmates through moral cultivation.49 Religious assistance became central within the prison regime and at the officers’ and subordinates’ academies.50 Security officers, priests, and doctors now formed the “correctional councils” that classified inmates.51 The Council reported on biographical aspects, marital status, psychiatric conditions, and criminological history. The “criminological history,”—a traditional dossier used to classify inmates—now registered whether “the individual had political militancy” and was extended to “Subversive Criminals” (“Delincuentes subsersivos”) beginning in 1980 (SPFBPP 1356, 7.14.1980).

This renewed security orientation was reinforced after 1979. After the Junta decided that the “war against subversion” had been won, the renewed focus on security coincided with the project of “normalization” and institutional consolidation of the military regime. In 1979, the penal bureaucracy resumed prison-building and inaugurated the modern jail of Caseros (see picture 1)52 as a space of “redemption.”53 The prison

47 Daniel Barberis, a common prisoner, recounts the “Devoto Massacre” where on March 13, 1978 at the Devoto Jail, 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 Barberis 1991).
48 Priests had gained power within the prison during the presidency of Ongania—with a penitentiary pastoral Service conference in 1967, with monthly speeches to the inmates and personnel—but since 1975 the church expanded its power dramatically.
49 On 1977 the re-training course for subordinate officers will include, not only “A. Command, B. penitentiary techniques” reduced to securing order, C. “penitentiary operations,” (internal and external security, and inspections); D. “administrative regulations” (reports, petitions, etc.), but also E. “Counterinsurgency Intelligence.” This Counterinsurgency intelligence covered now traditional intelligence aspects like “(i) What is intelligence and Counterintelligence; (ii) Psychological actions; (iii) Counterinsurgency Intelligence; (iv) Information community, meetings, Penitentiary intelligence service, (v) Intelligence and counterintelligence in units; (vi) ways of reporting”, but also a general religious catholic anti-Marxist view, addressing: “(vii) What is Marxist-Leninism and communism, how they operate,” followed by “(ix) The importance of religion, love to the fatherland, and the unity of the family,” closing with “(x) “Methods that subversion uses at the national and international level to destructs us, physically, morally, spiritually and intellectually.” (See SPFBP 1188, 11.14.1977)
50 In 1979, the Chief Chaplain wrote in the penitentiary service journal an “original article” on “Penitentiary Theory and Practice”, integrating pastoral know-how with penitentiary work. Religious pastoral know-how took the place of penological expertise in the official house-organ in those days. (See RPP, 1979-1981).
51 The Councils were composed by the director, the internal security director and the representatives of the “Labor Division,” “Spiritual Assistance Section,” “Social Work,” “Medical Assistance”, “Education” and lastly the “Criminological Service”.
52 The model jail was designed in 1962 and inaugurated on April 1979 (U-1). The government also inaugurates a prison for women in Ezeiza in 1978 and an pavilion for minors in 1979 (RPP, XXXII (1977-1980). The new perspectives and division of labor will be superimposed over the original jail and the
director switched training programs, focusing on administrative regulation and a political education steeped in a catholic perspective combined with a “militarized” production of security. The new consensus around security and moral regeneration was shared by politically conservative and catholic legal scholars at the federal Judiciary and the justice Ministry. As we saw in the last chapter, the judiciary recognized the executive branch’s right to detain individuals, to deny them their right to leave the country, and to protect prison authorities, even in case of massacres (Barberis 1991:61–62).

The total militarization of the prison bureaucracy and its involvement in political repression would have deep consequences. The first was that common prisons became politicized. The harsh prison regime took authority away from old prisoners’ leaders (the gratas of the big-house), and left younger criminals, who were less respectful of guards, to gain ascendency among groups of common criminals. In turn, many inmates would become politically active, conscious of their marginal conditions and of the illegitimacy of their imprisonment and treatment. While more research is needed, the evidence suggests that many common prisoners became politically organized, transforming from “convicts” (“presos”) into “social convicts (“presos sociales”)” (See Barberis 1994). They appropriated the administrative category of “social prisoners” used to distinguish them from political prisoners and used it to organize non-political prisoners. In late 1982 and early 1983, even before the transition, common prisoners began using hunger strikes in the Devoto Jail, on a routine basis, demanding speedier trials. The convergence of

women’s prison in Ezeiza, planned in 1961. The new establishments will have as usual a director, administration, correctional council, but also a security directorate (RPP XXXII:147). Each new establishment will have also a chapel

53 Inaugurating the hypermodern Caseros Prison for Pretrial detainees in 1978 the Justice Ministry A. Rodriguez Varela presented it as fulfilling the Constitution of 1853 but inspired in the Spanish thirteenth century laws of King Alfonso X “El Sabio.” He also announced that the Caseros prison will allow inmates to “work, study, practice sports or meditate… [being] a testimony of the human capacity for worldly and otherworldly redemption and its vocation to eternity” (SPFBP #1282, 5.22.1979: “Alocución del S.E. el Sr. Ministro de Justicia de la Nación con motivo de la inauguración de la Cárcel del Encausados de la Capital (U. 1).”

54 Starting in 1979 the service creates a High Penitentiary Academy, changed the name and curriculum of the officer and subordinates school. The officers incorporation course now took three years, instead of two, and covered legal, penological and “military” courses. The new programs will provide “general knowledge, in line with the new role of the penitentiary officer, with a focus on the values of our cultural tradition” (RPP XXII [1980]:120). Initial training will include “ethics” and “military training,” suffused with rituals and doctrine of catholic organicist sociodicy and ritual affirmations of their heroism.”See SPFBP # 1238, 8.9.1978: “Agentes de la institución caídos en la lucha contra los terroristas subversivos”. At the High Police Academy, that retrained officers, the “Professional Update Course” now included “intelligence and counterinsurgency,” “security operations,” “geopolitics” and “demographic policies.” In line with this militarization the penitentiary corps were even mobilized to serve as rearguard units for the invasion to the Falkland Islands in 1982 (Interview, Office Daniel Legide, captain of that battalion).

55 In 1973 in the Pujadas and others case the Supreme Court recognize the authority to the Executive branch (Roberto Bergalli 1982c:151) in such areas. In 1977 the Supreme Court denied the writ of habeas corpus on the grounds of the power of the executive during the state of emergency (Zamorano 1984: appendix).

56 Barberis argues that the “social convict was a “new type of prisoner, not like the dependent marginal” that was not been incorporated to society (the lumpenproletariat), but a social marginal, recently excluded by the economic changes (Barberis, 1994).

57 In a 1985 study by prison officers, they documented 54 hunger strikers out of 724 inmates at the Devoto Prison during 1983. From those 54, 12 were in strike for problems with their trial, 12 for being unfairly
violent youths disputing hierarchies, along with the politicized common prisoners, all fueled prison turmoil during democratic times. This turmoil would be decisive in shaping the carceral field after the transition.

In second place, legal scholars, criminologists, and penologists who had invested in the field in during the late 1960 and early 1970s were sent to the periphery of the field, to the academy, or even exiled. The militarization caused criminological experts to disband. Penological expert Juan Carlos Garcia Basalo took refuge in the Catholic University of El Salvador, where he met conservative legal scholar Ricardo Levene (h), the conservative code-writer reformer we met in the previous chapter. Liberal criminologists identified with the political opposition were persecuted, jailed and sometimes exiled. Roberto Bergalli left for Spain after being imprisoned (Bergalli 1982a). Socio-legal scholars like Neuman and Irurzun were excluded from the discussion over penitentiary matters. These marginalized criminologists, liberal judges, and law school professors not only criticized the prison for its despotic and dehumanizing reality during dictatorship after the transition, but also prepared a counter-attack grounded in the language of human rights, of rehabilitation, and of the minimum use of imprisonment.

Thirdly, the carceral field had become militarized and dominated by agents rich in bureaucratic power (in particular, Army officers and their subordinated militarized prison officers within the administration). The reader should bear in mind that constant political and military intervention politicized careers of prison officers and devalued the authority of penitentiary officers in general. Their prestige and authority to regulate prison policies had become too attached to the military officers they had been serving. With the expulsion of the military from the government, the penitentiary officer suffered a sudden devaluation of authority over prison policies. After transition the militarized penitentiaries would be degraded and criticized, both by democratic political agents and by the returning correctionalist experts (criminologists and penologists). They would eventually recover power within the carceral field given the government’s need to control the progressively tumultuous prisons of democracy.


The transition to democracy presented an opportunity to the expelled criminologists, the devalued penologists, and marginalized legal scholars, as well as to the renovated judicial authorities to recover positions in the center of the carceral field. Their return was made possible only through the backing of the democratically elected executive branch. For the executive branch, it was not difficult 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 as central government advisors working within the prison

punished, 7 to have access to a judge, 8 protested for police violence, 3 for getting a solution, 2 for being translated, 2 for political reasons, and 3 for lack of medical attention and remaining for “purely penitentiary problems” (Acosta et al. 1985).

58 That university organized in 1979 a criminology conference where he formed the Society of Latin American Criminology and started a doctorate in “penal sciences” espousing both the medicalized criminology of the last positivist scholars (Francisco Laplaza, Dean of Buenos Aires Law School, Isidoro De Benedetti, Gonzalez Millan, Maldonado), but also the need to reduce the use of the prison.
administration involved the development of a new discourse. Even if within the new discourse was prison punishment was central, their followers, tried to minimize it, supporting the use of prisons only to correct and rehabilitate. In the early 1980s criminology and penology got combined with human rights as ultimate criteria to judge imprisonment routines. It is the return of these older experts that explains the sudden return of rehabilitation policies and programs. This return took place in waves, first under the auspices of President Alfonsin, and then under the auspices of President Menem, in each case to satisfy the prison governance problem of the executive branch. But the advance of the old experts implied imposing their authority over prisons that had become enormously disordered and riotous after transition. 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 correctionalists. As the democratic regime consolidated, the dominant agent of the field, the executive branch, progressively returned power to the militarized officers, leaving still a fair share to the human rights experts, who, as we will see later, also served to control these highly mutinous prisons. The riotous prisons also led the executive branch to initially support decarceration policies. Security-oriented guards and routines eventually eclipsed rehabilitation programs and concerns in the early 2000s. The pacification of prisons, through the combined action of human rights actors and heightened repression, along with the changes in the political arena, also led way to populist punitivism in the early 2000s.

4.2.2.1. Implosive transition, retreat of the militarized guards, and mobilized prisons (1983-1989)

In the prison arena, as in the police and courts, the executive branch policies followed Alfonsin’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. These programs permitted the return of previously marginalized judges, legal scholars, and criminologists, reviving a discourse of rehabilitation that, in the new space of prison policies and views, acquired a demilitarizing and decarcerating meaning.

The discourse of rehabilitation and decarceration benefited from Alfonsin’s reinforcement of courts in general. He began by ordering the prosecution of the military Juntas, and followed with the “de-criminalization” of many political actions. This “de-criminalization of politics” included laws that reduced sentences for those detained or convicted for political offenses. The Congress also extended the reduction of sentences to

59 At the very moment of his inauguration President Alfonsin ordered the prosecuting of the military commanders for criminal abuses during their mandates and changed the law regulating political crimes and political detainees. Alfonsin ordered the prosecution of the first three Military Juntas in his first day in office. Correspondingly the government passed Law 23077, “Law on Defense of Democracy,” that repealed laws punishing “subversive activity” and related common crimes, and redefined political crimes as crimes against the democratic regime.
non-political prisoners. These extensions of decarceration policies from political prisoner to common prisoners reflected the return of criminal-law and socio-legal scholars and criminologists, who advised the new political authorities to adopt decarceration policies, removing citizens from the militarized prisons.

The returning liberal legal scholars and criminologists reintroduced old local critiques of the prison from the early 1970s but couched now in human rights and due process terms. Julio Maier and Alberto Binder, close to the “philosophers” proposed a new criminal procedure that would diverge short sentences to community sanctions, reduce prisoners on remand, and expand judicial supervision of prisons. Socio-legal scholar and sociologists reignited the critique of the prison for its labeling and prisonization effects, and advanced an adapted critical criminology in response.

The Justice Department, the Under-Secretary of Justice, and the Prison Department were put in the hands of lawyers, so as to fulfill Alfonsin’s project of demilitarizing organizations and reinstating the rule of law. Another reason was to deal with prison disorder, and in particular to manage riots and hunger strikes that had re-erupted more intensely after the transition. The first two directors of the Federal Penitentiary Service were judges or former justice executives. The first director was Hector Rossi, Alfonsin’s personal lawyer. He began by devaluing the militarized self-definition of officers and guards, altering training, and revaluating rehabilitation and treatment, all couched in the double umbrella of human rights and social science.

60 By mid-1984, when the congress passed the reduction of sanctions political crime, it extended the benefits to common criminals, crediting “social criminals” three days for every two fulfilled convicted or on remand. Congress considered that convicts have passed through “cruel and unusual punishment” under dictatorship and have been punished by illegitimate judge. But its also reflected the return of older legal experts and criminological (with critical visions on the prison) and the appearance of new ones, namely human rights activists.

61 Three days after inauguration Alfonsin presented a project for a law on recidivism and suspended sentences that aimed to “reduced the generalized excess of inmates imprisoned,” to diminish the use of short sentences, and to avoid “labeling” by reducing the period of time when crime records could be reported. The project increased from two to three years the minimum sentences that could be suspended, putting the decision in the hands of judges—instead of being automatic and based on reports as before. The UCR representative informing the law and the opposition agreed that such law was necessary to “rationalize” and “diminish” the use of short sentences, in order to avoid “putting those condemned for minor crimes in an adverse prison environment that prevents the social reintegration” (Congreso de la Nación 1984).

62 These studies were initiated by Neuman and Irurzun (1979), and continued in the early 1980s by Eugenio Zaffaroni and Elias Carranza who published a study in 1983 on prisoner on remand in Latin America (Marcó del Pont 1988:224).

63 European and American critical criminology from the late 1970 was incorporated in Latin América early 1980s to denounce the “official” criminology” and propose proposing a “criminology of liberation” (Roberto Bergalli 1982b) according to which “even the sweetest and most human punishment is institutional violence that cannot be covered by humanitarian or false assistance aims” (Roberto Bergalli 1982d).

64 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).
captives, whose voice was now to be taken into account.\textsuperscript{65} Cells doors were opened, and following programs proposed by inmates themselves, leaders were elected as representatives for each cell-block.\textsuperscript{66} The citizen-prisoners promptly increased their power—but not through collective petitions, as the democratic ideal might suggest, but through old-style protests and prison riots.\textsuperscript{67} Riots thrust the prison back onto the public stage, and were depicted in the recently freed media. Prisoners also continued their political work, in particular after the creation of University of Buenos Aires “Devoto University Group” program, which provided university education to inmates. The program helped inmates further formulate alternative visions of the prison and legal know-how. In a very short time, calming down the prison became the first administration’s political priority. The next director, Judge Carlos Daray—from a traditional family connected with the federal judiciary—was appointed in 1985. He was chosen not for his criminological expertise, or even for his party affiliations, but “because of the way in which [he] managed the multiple riots and protests of the last year. At the end of the day, it is the judge who handles the mutiny, and Rossi and the Minister of Justice liked that” (Interview Carlos Daray, July 2010).

The concerns with rehabilitation and human rights were promptly incorporated into new training programs,\textsuperscript{68} which favored “treatment oriented officers” rather than security oriented ones. Prisons were put in the hands of officers with careers with the general directorate in Buenos Aires, 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

\textsuperscript{65} On the grounds of sociological criticism of the prison subculture the director opened the prison to the community and tried to make prison conditions as similar as possible to those outside. He ended the obligation of inmates to give a military salute to officers and eased the access of lawyers to their clients. He also facilitated relations with family members and friends, and authorized those on remand to work.

\textsuperscript{66} 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 Rossi backed (Barberis 1991:48).

\textsuperscript{67} The decisions to allow inmates to regulate themselves in pavilions, and in particular in the Caseros Jail (Legide, 2001: 62), combined with the sudden retreat of guards, lead to a four days riot of the New Caseros tower jail on April 1984. Inmates destroyed the movie theater, the gym, the hospital, the intensive care units, as well as phone boots for visits. Later on they opened holes in the walls, communicating between levels and the outside, in the upper floor. The riots were was followed by a legal reduction of sentences for common convicts (Interview Security Officer, Daniel Legide, September 2010).

\textsuperscript{68} The officers schools encouraged “ethical, legal, disciplinary and social science skills to understand human behavior and 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 will get re-trained 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 “Prisionization, 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. In the same direction, on the job training conferences dealt with “new recidivism and conditional sentences, human rights conventions and constitutional laws, communication with inmates.” Even security skills and weapon handling training was framed within “the conscience of human rights [the inmates].” (SPFABPP, 5.29.1984).
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. The rehabilitation consensus and priorities progressively began losing power, both because prisons had become more problematic and because the riots had begun to take a toll on the government’s image.

This politicization found an executive power that was gradually weakened in the political arena, a power that finally opted to suppress scandals rather than advance the rule of law within the prison. Correctionalism and legality began to be subordinated to the political need to produce a quiet prison. In 1987 Secretary of Justice Enrique Paixao selected as director a career officer from the treatment-oriented sector, so as to avoid the political damages derived from the riots. Director officer Angrigiani—the first director who had graduated from the penitentiary officers’ academy—could follow his treatment-oriented preferences as long as he could maintain order in the prisons.

But this political priority given to calm down prisons opened the door to judicial authorities, and later on to human rights activists. The combined economic and political crisis permitted the initial advance of court and liberal human rights activists. Liberal legal scholars and judges returned to the criminal courts and the Supreme Court itself became staffed by “philosophers” like Genaro Carrio. Many courts extended the Supreme Courts “garantista” (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,” which was developed within the judiciary as opposed to a “authoritarian” jurisprudence (Cavallero 1991:31–31). In 1987, the Supreme Court itself admonished the executive branch, pressuring it to improve prison conditions, denouncing the filthiness and lack of medical

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69 The Security oriented officers saw their self-image and prestige threatened by the public repudiation of the military traditions in the press and judiciary and their routines of repression questioned by judges, the lawyer directors, the powerful cliques of “better educated” officers, and the activated prisoners. The AIDS epidemic added a greater sense of vulnerability and hate toward the emboldened prisoners.

70 In 1987, Alfonsinism suffered a big loss in the elections to renew the congress and started to lose power. According to Secretary Paixao the government had too many fronts—“we had opened to many drawers” were his words, and the government needed to preserve their shrinking political capital, constantly exposed to the possibility of a new mutiny or scandals.

71 Enrique Paixao was very frank: “My sensation was that not having somebody from the penitentiary corps [in the direction] involved transferring the responsibility of prisons to political power but without transferring the capability to conduct what was going on [inside prisons]” (Interview Paixao, June 2010).

72 Agrigiani advocated “legality,” “reduction of prison populations,” “relations with the community,” increased participation of inmates,” and “a general professionalization” based “on criminology” (Discourse SPFABP 7.21.1988). He generalized criminological training, organized criminological conferences, increase access to education, both for inmates and subordinate officers, inaugurated low surveillance facilities, and emphasized correctional treatment and wellbeing of inmates (SPFABP 7.20.1989). Still, he had to control disturbances, or he will be out. The tensest prison, Caseros was directed by Officer Sauvage, commander of the group that killed the inmates in the 1978 riot. And in the meantime riots continued all throughout 1987 and 1988.

73 This jurisprudence involved following the US Miranda doctrine all the way to declare unconstitutional punishing the possession of drugs for personal use (Basterrica Case). Criminal Courts also regained power to determine prison policies with the right to determine conditional sentences in 1984 and engaged in an incipient judicial activism, exploiting in some cases the writ of habeas corpus action to object illegitimate changes in prison conditions.
services as a violation of constitutional rights (La voz del interior 1987). At about the same time, human rights activists began focusing on torture and abuses within prisons.

The government’s decision to limit the prosecution of state crimes in 1987 and the deterioration of prison conditions in 1988 led human rights groups to invest in the carceral field on behalf of common criminals—and in the police and criminal courts arenas too, as we saw in the previous chapters. This decision was fueled by the change in the human rights policy as a result of which “all political channels of [human rights] organizations to introduce their demands disappeared” (Novaro 2010:61). Intrepid CELS lawyers disguised as journalists began monitoring prisons. In late 1988 the Caseros prison after a big riot where Director Angrigiani ordered a strong repression. CELS denounced the conditions of inmates, the repression of the escape attempts and the violent restoration of order, that included a prisoner killed at point blank (Verbitsky 1988).

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. In the general space of the field, the returning critical criminologists and legal scholars, and the judiciary and legal academy partially regained their older position in the field, recovering their authority on prison policies. In a parallel movement, within prisons, security-oriented officers lost ground to treatment-oriented officers, even if political demands for order allowed them to reconvert their know-how as security expertise. This structure was soon to be changed, with the change in the most important position, that of the executive branch and the inauguration of Menem’s presidency. The continuation of prison riots in 1989 and all throughout 1992 redefined this unstable order and modified the positions of correctionalist reformers, security-oriented officers, and human rights activists in unexpected ways.
Figure 4-5 Argentine federal carceral field, circa 1987
4.2.2.2 The unexpected return of correctionalism under Menem and the entrance of human rights in the still tumultuous prisons (1989-1999)

Throughout Menem’s decade-long tenure, in which he implemented a drastic structural adjustment in the economy and the state (Svampa 2005; Torrado 2010) the politicization of the prison did not lead to a purely security-oriented prison. By contrast, the political problem of securing order and reducing scandals fostered decarceration policies designed to reduce prison populations, improve prison conditions, and protect inmates’ rights. The central-government interest in securing order 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. However, the gains made by old penologists, human rights experts, and judges were progressively eroded by sheer overcrowding, allowing security-oriented officers to regain power.

4.2.2.2.a. Restoring order, failing and opening the door to human rights and old penology experts

Menem faced a severe economic and political crisis from 1989 to 1991, which included a budgetary crisis, food riots in the major cities of Argentina, and a severe increase in poverty rates. In the middle of this crisis, he abandoned populist redistributive promises and turned to the neoliberal privatization of public companies, the liberalization of financial markets, the flexibilization of labor relations, and the reduction of compensatory welfare (Svampa 2005). Displaying his pragmatism, he pardoned the members of the military Junta. On the prison front, as was the case with the police, he first opted to repress prison turmoil. However, as his strategy proved to be a failure, he enlisted human rights and correctionalist penologists to pacify the mutinous prisons. In this carceral subfield, where state punishment and state action became more and more dependent on human rights legitimations, did not lead to “increased informality and despotism” (Muller 2011a). Instead, it led initially to the advance of judicial authorities and legal experts over prison policies and regimes.

To eliminate or neutralize conflict in the prisons, the first Ministry of Justice, Cesar Arias, 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, training and mystique of the late 1970s, expanding maximum-security

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

regulations to detention centers. These “security reinforcements” were used to despotically control a suddenly increased and impoverished prison population. In the middle of the prison crisis, Menem switched up the Justice Ministry and the secretary of Justice. He 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. Arslanian 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. He also created a special commission on human rights within the Justice Ministry to deal with reports made to the American Commission of Human Rights. His tenure was short, and he left in mid-1992. However, the teams he had assembled to work on prisons and the criminal procedure reform opened the door for judges, human rights activist, and penologists.

Arslanian’s replacement, Minister of Justice Jorge Maiorano, tried the same repressive strategies, giving more power to security officers with their policies of despotic order, only the see them fail again. As a last-minute move, the minister to transport inmates; 17. Repression in the prison, recovery and restoration of order; 18. Recovery of hostages; 19. Use of special assault teams (penitentiary or other) to restore order; 20. New doctrines; 21. Intelligence in the penitentiary context; 23. Human resources; 24. Material Resources; 25. Relations with the Judiciary; 26. Relations with Political power; 27. Relations with humanity [human rights]; 28. Neutralization of organizations and persons who activate and capitalize internal tension and conflicts of the prison population; 29. Occupational diseases; 30. Genesis of aggressiveness in personnel” (SPFABP 5.2.1990).

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).”

Now maximum security inmates included not just the traditional “individuals that are very difficult to adapt,” but the new category of those “with aggressive personality, with high tendency to escape, or to provoke or participate in mutinies, etc.” Second, the classification includes jails, including the Caseros and Devoto Jails, housing 60 % of the population within the maximum security category. The maximum security regimes involves, among other things “discipline, daily inspections, only supervised activities, closed cells, and privileges everything having to do with security”(SPFABP, 4.24.1991).

In mid-1991, a professor in the Devoto Jail University Center describes the regime as highly unregulated but also highly deteriorated and despotic. The directors and guards are only concerned with “security and contentions”, inmates live as in 1984 in collective pavilions, with continuous sanctions, with limited visits, with limited food provision (only for 10% the population), minimal medical assistance (three doctors for 1,500 inmates), with diseases from lack of hygiene, and with the great majority of population with no occupation, many of them developing “physical diseases and grave psychopathological conditions,” consuming drugs or tranquilizers, “and merely trying to survive” (Villarruel 1992).

Prison population went from 3,830 in 1988 to 4,965 in 1991, housed in a prison system that saw its budget cut in half from the previous year. Many prisoners suffered from lack of food, medical attention and were held in overcrowded facilities. The economic crisis not only reduced budgets but limited the contributions of family members as well as their visits.

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).

The director of the Devoto Jail, David Lugo has been part of a “paramilitary unit” and worked in illegal detention centers during dictatorship (CORREPI). On July 1991 12 inmates died in a penal colony in Santa Rosa, in the southern province of La Pampa. Still in June 1992, mutinies and hunger strikes in Devoto and Caseros Jails were constant. In mid-1992, the main newspaper editorialized on the prison conditions under
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 two 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. Judicial agents suddenly became important and useful.

4.2.2.2.b. Pacifying prisons through prisoners’ rights: the arrival of new legal experts

Special judges in charge of controlling sentences, human rights activists and experts entered and penological specialists, reentered the carceral field in the early 1990s. Their judicial approaches de-politicized prison revolts, instead turning them into individuals demands which reduced prison turmoil and riots.

The 1992 criminal procedure code of 1992 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, they created expectations among the inmates, who have begun to become savvy about making legal claims. The next innovation was the creation of the penitentiary ombudsman. After riots, hunger strikes, and judicial presentations that took place between 1989-1992, a “special commission about carceral problems” within the Ministry of Justice suggested creating it (decree 1058). Human rights experts captured the new ombudsman position.

The first prison ombudsman was Eugenio Freixas, a human rights lawyer who had worked in National Commission on the Disappearance of Persons (CONADEP). As

the title “The prison inferno” (Clarin 6.3.1992) portrayed them as “overcrowded, with no adequate classification, and under the law of the jungle.

82 He put back the old wardens. Jovito Acosta the Director in 1992 has been a military instructor during dictatorship, and his aids were also from the security oriented sectors.

83 This special judge was part of the reform project that liberal legal reformers Maier and Binder presented in 1987 Maier and Binder’s Project, actually proposed a collegial body, that was formed by criminal court judges, and not a specialized court (ch. 43), Plan of 1987. When the conservative project of Levene became law in 1991, Minister of Justice Arslanian added the figure to the project.

84 In 1992 two new sentence judges (“jueces de ejecución penal) were designated. One was Martín Vazquez Acuña, and the other was Eugenio Freixas. Vazquez Acuña was part of the Appellate Courts of Buenos Aires and was involved in reporting prison conditions. Freixas had a career in the justice administration and, since 1984, in the Secretary of Human rights in charge of writing the Argentina Truth Commission Report.

85 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 Eugenion Freixas, first execution judge, September 2010).

86 Inmates in the most critical jails, in particular that of Devoto, counted in 1990 with their own legal clinic, staffed with inmates studying law and the University Center and aided inmates in writing petitions to judges about sanctions (Villarruel 1992:67).

87 Freixas had close contact 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).
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 (Freixas 1997). He also dealt with the petitions of inmates, usually about the length of their trials, visits, relocation, violence, and arbitrary punishments. In 1994 prison protests began to subside. According to Freixas, his work helped “to depolitize 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). The reduction of prison riots in that period back his claims. Very soon he began proposing policies that also favored decarceration, framed in terms of human rights. His policy suggestions were backed by the interested executive branch and the senate adopted bills to reduce time served by convicts.88 He also influenced the regulation of internal sanctions within the new Penitentiary Regime Act (Ley de Ejecución Penitenciaria) Law 24660. This last law was also the work of the old penitentiary experts who were now back in the prison administration.

The old penologists were a group of advisors that the new ministry of Justice, Barra—from the right wing of Peronism—brought to the ministry. These experts were working at the private Universidad Kennedy. One was Julio Aparicio, a social worker who served in the foundation for ex-convicts of the capital (Patronato de Liberados) for two decades. The other was Juan Carlos Garcia Basalo, the old penologist from the penitentiary service, who had been responsible for the correctionalist programs implemented between 1963 and 1971. Aparicio and Garcia Basalo were put in charge of prison policies, as the minister was not interested in them, but knew prison problems could jeopardize his tenure.89 Aparicio, Garcia Basalo, and Freixas (the ombudsman) exploited the political space left by the minister to advance their own programs.90

Just as Freixas used the space to consolidate human rights expertise, producing reports and policy recommendations, Aparicio and García Basalo wrote a new penitentiary law, placing correctionalism and community sanctions at the proposal’s

88 A very important law called “Two-for-One” Law (# 24390) was passed to fulfill Article 7.5 of the American Convention of Human Rights that mandated that pretrial detention could last a maximum of two years, after which it could be extended one more year by the judge and only under justified circumstances. After that the prisoner had to be released. Each day the prisoner remained on remand beyond that maximum period it counted as two in case he would be sentenced to prison. According to Freixas “with the prisoners on remand and the extension of trials, it was a scandal, we could not defend ourselves in the face of the [American] Commission [on Human Rights]” (Interview, Eugenio Freixas).

89 After a month in office the Justice Minister create the “Secretariat of Penitentiary Policy and Social Adaptation” (Decree 1088/94) that would assist the minister in “the penitentiary policy, penitentiary reform and in the execution of sentences and “would be the link between the Ministry of Justice and the National Directorate of the Federal Penitentiary Service.”

90 According to Aparicio, “prison issues have become a central problem for all governments, and many ministers had lost their posts because of prison problems” (Interview, August 2010) Frexias refers to that team as a part of “a political structure of control that [Minister Rodolfo] Barra put in place, to which asked them not to bring him bad news. In those days the Justice Ministry was not very important, it mainly intervened in the designation of judges, but it had a heavy load...the prison. The prison was indeed the main cause of removal for ministers. He gave the prison to a criminal law lawyer and to his assistant [Julio] Aparicio. Aparicio was very well trained, and very well staffed, and with him we proposed judicializing the prison. That was the first step” (Interview Eugenio Freixas).
center. They also designed a “Master Plan for the National Penitentiary Policy” (Ministerio de Justicia de la Nación 1995) and drafted the new penitentiary law. Their draft became Law 24,660, the Penitentiary Regime Law in 1996. Going beyond pure legalism, they managed to construct new prisons and refurbish old ones. The new prisons were meant to reduce violence and overcrowding, and to make classification and treatment possible. Under-secretary Aparicio also worked between 1995 and 1997 to implement a new treatment methodology he called “Socializing Pedagogical Method,” which attempted to create a sense of legal consciousness among inmates (Secretaría de Política Penitenciaria 1997). A pre-release program was also put into place in 1998, so as to reduce the shock of egress.

The reformist policies and programs, the advance of the ombudsman Freixas, and the work of the supervisory judges served to pacify jails through a weak judicialization. The overall concern for prison order favored directors with experience in managing and controlling prisons through negotiation rather than through pure repression. This new style, however, implied giving power to certain inmates in the biggest prisons and professionalizing the security sectors to avoid excesses and to distribute responsibilities in cases of repression.

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91 The plan included a diagnosis and programs of infrastructure building, penological-penitentiary programs, personnel training, and the integration with private sector, provinces and other regional states.
92 It declared that the main objective of the prison was “to achieve the comprehension and respect of the law promoting his social reinsertion.” (Art. 1). He also passed a new regulation for prisoner’s on remand (Decree 17/97), and working with Freixas he a sanctions regime that secure the rights of inmates by giving a more strict definition of violations, equilibrating with inmates duties and regulating the procedure (Decree 18/97).
93 In 1996 a new building for young offenders and another for drug addicts were created in Marcos Paz, outside Buenos Aires (Federal Institute for Young Offenders, and Federal Center of Special Treatment for Young Adults). The new buildings included hospitals, centers to treat HIV positive inmates.
94 Between 1994 and 1998, the Judicial office in the Devoto Jails created a special division to take care of the requests of the ombudsman and judges. “the ombudsman, which had increased enormously, and of the special courts, that had highly qualified individuals, who controlled us very closely and if things did not match directors were punished, and finally, medical services...in those days, the inmates made petitions and if we did not respond.. The [convicts] talked to the ombudsman, or the special judges...and its was better for everybody...for us to do things better and for them.” (Officer Korosiuk, Judicial division of the Devoto Jail).
95 Deputy-Director Ayala summarized this change proposing a change “from guardian to penitentiary officer, where the art of convincing replaced the capacity to oblige.” (SPFABPN 7.21.1998). Silvio Ayala, General Director between 1997 and 2000 will be a clear exponent of the “presero” officer He had experiencing managing “difficult” prisons, like the maximum security prison of Rawson in 1992 and then to Caseros Jail between 1996 and 1997. In those days it was known that “if somebody wanted to be National Director, he had to pass an year in Devoto, if you pass it, then you can go Caseros and then possibly to Director” (Office Korosiuk).
96 In 1998, apparently he was able to pacify the Devoto Prison sending member of a powerful gang from Caseros to Devoto to assume the leadership of a difficult pavilion and to calm mutinies. In exchange, the gang member was aided to escape months later. (Kollman and Vales 2000)
Figure 4-6 Argentine federal carceral field, circa 1998

Juridical Field

Bureaucratic field

Political Field

Authority

Executive Branch
Menem / Ministry of Justice

Political Parties
UCR
Peronist

Under-Sec. Penit. Affs
Penitentiary Service
Director
(Negotiating officers)
- Security
- Treatment
Prisoners (Devoto Jail)
Devoto University Center

El Salvador Catholic University Kennedy
University
Penologists

Buenos Aires Appelate Courts
Execution Courts

Prison Ombudsman

CELS

Buenos Aires Law School
Devoto University Center

Academic Field

Journalistic field

legal and penological orientation
security and order concerns

Bold: new agents
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 it within the field. The late 1990s field has been reconstituted after the tortuous advance of the human rights experts and the return of the rehabilitated scholars in two political waves, first during the administration of Alfonsin, and then during the long presidency of Menem. However, the promise of rehabilitation became increasingly rhetorical in the next decade. Changes in the political sector of the carceral field produced a shift in the axis of penal power, and released a wave of punitive populism that flooded the Argentine prisons, including those of the federal justice system. This wave, however, reinforced the new structure of the carceral field. To the turn toward punitivism I turn now.

4.2.3 A contradictory prison in a fractured field: between maximum security and human rights in prisons and political populist punitivism

In this last section I want to analyze how the pacification of prisons and the re-legitimation of prisons, through the new penitentiary law and the new prison building of the late 1990s facilitated a more punitive orientation in the political sector of the carceral field. 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. Increased incarceration and violence provided a new opportunity for security-oriented officers and human rights experts to boost their positions within the expanding prison, leading to what I call the liberal-warehousing prison of Argentina.

In the late 2000 electoral processes, changes in the internal factions of parties and the (temporary) weakness in the executive branch (within the political system) combined to produce new prison policies where decarceration was replaced by punitivism in the political arena and rehabilitation subordinated to security and incapacitation within prisons. The 1999 election campaigns for president, for governor of Buenos Aires, and for Buenos Aires Mayor in 2000, demonstrated that crime and insecurity had reached the center of the political arena, reflecting the social insecurity produced by the mounting social polarization and flexibility in labor markets that accompanied the new financial, budgetary and economic crisis (Marcos Novaro 2009:553). Within the dominant parties (UCR and PJ), factions connected to legal and criminological experts espousing decarceration have lost their standing. The legal scholar experts were connected to Alfonsinism in the Radical Party, and the Renovación sectors of Peronism, but these factions lost their power within the party system of the early 2000s. Between 2000 and 2005, the political field fell under the control of the conservative sectors of the Radical and Peronist Party. As their political allies lost power, the decarceration consensus that had prevailed with the beginning of the transition to democracy among political circles was decidedly eroded. The executive branch, which, given the prison riots, had been like

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97 The politicization of criminal insecurity was promptly reflected also in greater number of sentences, harsher sentencing and reduction of conditional sentences (according to statistics I analyze in the next chapter, which also produced the swelling of the number of inmates in federal and provincial prisons, jails and police precincts. Between 1999 and 2001 inmates I federal prisons went from 6,300 to almost 8,000, while the budgets remained the same.
a dike against the punitive stance between 1985 and the late 1990s, in 2000 was politically weak and unable to stop the march of ever-more repressive laws, passed by a congress controlled by neo-conservative peronism since early 2000.

As we saw, democratic executive branches favored decarceration policies to keep prison numbers low and avoid political problems. But the new presidents (De la Rua in 2000, Duhalde in 2002, and Kirchner in 2003, were initially weak presidents. Under such circumstances, penal policies were put in the hands of Congress and subjected to the electoral concerns of conservative governors. At the same time, by the late 1990s prison riots had receded in the federal prisons. This combination of political factors explains why the National Congress passed Law 25297 in 2000, increasing by one third the minimum and the maximum prison terms for crimes involving weapons or violence. On May 2001, Congress repealed the “Two-for-One” law, no longer allowing detainees to count every pre-trial detention day served as two days of a sentence to serve. The Congress, controlled by the opposition, followed the conservative Peronist Governor of Buenos Aires in its also punitive stance. 98 As a result, prisons were kept overcrowded. 99 After 2000, prison building continued, but could not keep up with the pace of the imprisonment increase, leading again to new riots and protests. Only late in the decade renewed prison protests and new overcrowding returned power back to security-oriented officer, as well as to human rights activists, both within and outside the prison administration.

Elected president Fernando de la Rua, from the Radical Party within the Alliance for Work, Justice and Education (Alianza), continued Menem’s neoliberal liberalization of the economy and flexibilization of the labor market, but in a context of fiscal and economic crisis. Under these conditions, he proposed fighting state corruption as a “compensatory achievement” (Novaro 2002:70). During his administration, the old experts who had favored decarceration lost power. Criminal law scholars Julio Maier, Alberto Binder, David Baigun, Eugenio Zaffaroni, Jose Ignacio Caferrata Nores, and Leon Arslanian; criminologists Elias Neuman, but also Emilio García Mendez Juan Pegoraro; sociologist Pedro David and penologist Juan Carlos Garcia Basalo were initially invited to form a “Commission of Notables,” (SPFABPN 5.24.2000) by De la Rua’s administrations. However, the commission was canceled two months later (SPFABPN, 6.12.2000). The government and the emboldened opposition replaced the experts in penal policy-making, and political agents passed a string of punitive laws between 2001 and 2004.

In the prisons and the administrative sector, security eclipsed correctionalism and human rights concerns. The Minister of Justice, Ricardo Gil Lavedra—a prestigious lawyer member of the tribunal that sentenced the military junta back in 1983—announced “a criminal policy plan that will articulate social policies with penal policies” (Hauser

98 In 2000 the province of Buenos Aires repealed prison policies oriented to reintegration, eliminating “temporary release,” “the minimum security options,” “assisted releases,” “trial releases” in cases of aggravated manslaughter, rape, robbery, sex crimes, tortures and illegal captivity alternatives to prison followed by homicide.

99 With new rules and greater harshness in sentencing the prison population kept growing in Federal Prisons ballooned from 7,146 in 2000 to 9,246 in 2003. With the inauguration of many new federal prisons by 2003, there is officially no overcrowding, but 55% of prisoners on remand (SNEEP 2003), suffer overcrowding in the Devoto Jail.
but invested heavily in increasing prison security capabilities along with human rights monitoring. After the inauguration of De la Rua, riots soon returned. The central government this time was confident in dealing with riots through adding new buildings and implementing programs meant only to produce order. On early 2000 the Penitentiary Complex of Marcos Paz, with space for 1750 more beds was inaugurated, as a step to “deactivate” Caseros Jail. This prison architecture was very different from others, following US Penitentiary Complexes, and was indeed designed and built by a Florida, US, state architecture firm. The two new complexes, the Ezeiza and the Marcos Paz complex, housed 45% of the prison population, most of it remanded.

The administration put the new Penitentiary Complexes to full use, developing new “supermax” treatment programs and repositioning security-oriented officers. Combining the 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.”

This “meta-prison” (Wacquant 2013a) of maximum security divisions merged the treatment approach with a humans 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 select “maximum security inmates” every three months. The supermax treatment gave more power to officer specialized in security, who progressively institutionalized their know-how 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.

After a series of massive citizens’ protests following the kidnapping and killing of a middle-class young adult from Greater Buenos Aires, Axel Blumberg, under Kirchner’s administration (2003-2007) the central government passed another series of repressive laws that continued with the punitive logic. The new legislation increased punishment for

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100 Riots were fostered by overcrowding, misery and the new criminal cultures less prone to respect criminal hierarchies (Isla), as well as by the Under-secretary of Justice policies of fighting corruption (Alarcon 1999) which disarmed the arrangement between prison officer and inmates groups. In 2000 112 officers were removed for letting inmates get out to commit assaults and then return to prison (Rodriguez 2000). The Under-secretary created an “Ethics Commission” to deal with Internal Affairs and a specific procedure to manage cases of public scandals.

101 This new architecture would replace the Caseros and the Devoto Jails, still maximum security establishments.

102 A new classificatory system was devised to isolate and treat violent inmates, subject to 24-hours isolation cells, with maximum of groups of five to circulate and shower, two-hours walks, weekly visits, and a phone call every two-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 three months. The main objective was to “reduce intra-carceral violence, costs and produce a safe environment.” (SPFABPN 7.25.2000)

103 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 Legide 2001).
violent crimes, changed requirements for conditional release, and changed the Penitentiary Act of 1996 (Law 25,948), prohibiting parole and semi-detention in the case of those condemned for these crimes (Sozzo 2010:45–46). As the executive-branch under Kirchner) regained political power and initiative, the new Justice ministry continued investing in both security within prisons.

But, at the same time, the defeated and marginalized correctionalist experts of 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. In 2000, Francisco Mugnolo, a former member of the UCR house of representatives and once close to Alfonsin (Interview Meirelles, Prison Ombudsman Assistant, October 2010), became Prison ombudsman in the tradition of Freixa’s activist style. Once more the office fulfilled its function of de-fusing prison protests and writing scathing reports (Procuración Penitenciaria 2002) questioning the security officers. 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 2004, senators from the Radical and Peronist party passed a law giving the ombudsman ample powers to investigate prisons and detentions centers, granting it independence from the Executive Branch (Law 25,875). In the subsequent years, the ombudsman increased its power, with a permanent observatory for prisons in the capital city and great presence in all federal prisons. 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 chronic violence,

104 Law 25,882 increases penalties in one third for armed robbery; Law 25,886 increases the penalty of illegal possession of weapons; Law 25,893 mandates imprisonment for life for sexual abuse followed by manslaughter; and Law 25928, elevates the maximum accumulated prison sentences up to 50 years.
105 It makes conditional release more difficult by demanding a report predicting social reintegration, and elevated from 20 to 35 years the minimum period after which those condemned for life can ask for conditional release; prohibited it for reoffenders, and those condemned for killing during kidnapping, sexual abuse, robbery
106 In 2003 an active secretary of justice, Gustavo Beliz, and his undersecretary Lanusse reorganized security and transport division (SPFABPN 10.7.2003), the department of intelligence (SPFABPN 12.23.2003), and continued fighting corruption purging the top eschelons (Rodriguez 2003.8.6).
107 He was essential in solving a long huge hunger strike that started in the Devoto Prison December of 2000 and lasted until February of 2001, backed by inmates of most federal prisons. According to writer and journalist Christian Alarcon “the prison ombudsman appear to be the focus point of this conflict, in charge of protecting the rights of inmates” (Alarcon 2001).
108 The report describes treatment subordinated to “an hegemonic concern for security and internal order” (58), with inmates classified “according to internal discipline and security concerns, aiming to preserve the facade of criminological treatment to produce a “quiet prison” (68) denounces “no legal forms followed when imposing sanctions” (70), “limited education and training of inmates” (142) and guards’ violence with “welcoming hitting,” demanding inmates “ obey them, or other” (124). The report also made “policy recommendations”: to demilitarize guards, reinforce criminological services, increase administrative personnel and retrain personnel, and community alternatives to prison” (Procuración Penitenciaria 2002:164–166).
109 The Secretary of Penitentiary Affairs, designated retired officers to deal with the growing corruption of the force, which involved not only scandals for letting people out to still and get back, but even a robbery of weapons to the arm depot, and drug-traffic rings at the Devoto Jail (Diario Clarin 2002).
abuse, torture and despotism that takes place behind the walls of the new penitentiary complexes and old prisons.\(^{110}\)

In summary after the return of democracy and the correctionalist experts, along with the highly riotous prisons and the interests of the executive branch, all combined to produce two decades of non-punitive policies in the political sector of the carceral field. The progressive pacification of prisons—thank to their judicialization, 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 correctionalist experts were put aside. Having reconstructed the new architecture of the carceral field, the rise and demise of rehabilitation, and the resulting contested symbolic order as well as the changes from decarcerating to incarcerating prison policies, I now turn to the more stable and progressive evolution of of the democratic-era Chilean prison reform policies and imprisonment policies.

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

In Chile the correctionalist ideal, which developed within the heteronomous prisons in the late 1960s, was preserved during the dictatorship. The prison itself, historically controlled by the executive branch, was less militarized during the military regime, not because the heteronomous prison could shield off from the advance of the military, but because the prison was again considered secondary within the strategy of political repression which took place mainly through the army, intelligence bodies and the police. Given the limited militarization of the prison during dictatorship and the easy achievement of control over prison elites by the incoming elected authorities, prison reform was not a priority for the first democratic government, as it could easily control the institution. It was not a politically attractive problem either and human rights experts did not invest much in the issue either—they reconverted their know-how mostly into the criminal courts field of Chile, giving all their backing and legitimacy to the expanded criminal courts bureaucracies. The structure of the (weak) carceral field, controlled by the executive branch, remained very stable before, during and after dictatorship. It was only when the modernized criminal justice began increasing the prison population, in the early 2000s, that human rights experts finally entered the carceral field more forcefully and seriously that the structure of the field was somewhat modified.

However, by then the central government preferred to protect its investment in the criminal courts, highly politically profitable as they were. Instead, the central government proposed solving the “prison crisis” not through introducing judicial and human rights activists to reduce conflict, but through market means, privatizing some facilities and leaving the semi-militarized guards in charge of custody, and systematically denying the existence of any “human rights problems” in its overcrowded and understaffed prisons.

\(^{110}\) From attending 5,900 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 legal issues for early release, etc. (40%). (Procuración Penitenciaria 2002, 2007, 2010).
4.3.1. The consolidation of the carceral field in Chile (1930-1970) and the weak implementation of correctionalism in the heteronomous prison

In Chile, the carceral subfield, 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, between up until 1970, the penitentiary administrators and correctionalist experts acquired a strong position and a fair share of influence over prison policies. The carceral subfield, however, as was the case in Argentina, remained dominated by the agents from the political subsector, who were less contradictory and oscillatory that those of Argentina, but who were also more indifferent to prison policies, before, during and after dictatorship. 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 administrations. This correctionalist perspective was not only the ambiguously held organizational culture of the prison administrations, but also served as a fulcrum to legitimate the expansion of prison building and prison population during the dictatorship of 1973-1990s and afterward, during dictatorship. Dictatorship-era authorities and avid economic experts presented themselves as completing the long-term progression toward a correctionalist system that encompassed both modern prisons and community sanctions. After the transition to democracy in 1990, central government authorities considered that prisons had to be only partially reformed, continuing the dictatorship’s policies, of weak rehabilitation and community sanctions, and later on they turned to pure security and incapacitation.

In Chile, 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. Between 1860 and 1900, numerous prisons and jails were built in small cities. Between the 1870s and 1920s, the central government exercised almost no control over prisons, limiting itself to allocating budgets and designating personnel. Even if the system was concentrated in a few mid-sized prisons, judicial authorities and

111 In the 1830s, after experimenting with public and spectacular punishment in the form of jails put on wagons with working prisoners, liberal governments introduced the penitentiary logic (Leon Leon 1997: 19) building the Penitentiary of Santiago in the 1840s, the Santiago Jail in 1860, and followed by four “big houses” in the agricultural central valley built in the next decade (among them those of Tacna and Los Angeles).

112 By 1883 there were 69 prisons, including the Santiago Jails, the penitentiaries—that now included the Valparaiso Penitentiary, houses of correction for women in Santiago and jails. These big houses were inspired by the liberal project of legal punishment centered in educating and guiding sentiments through sheer fear and predictable punishment. Prison building followed the conquest of the northern nitrate region to Peru and Bolivia, the advance of the agricultural frontier in the south, and the projection of sovereignty in the far south, in the province of Magallanes. In the 1900s Chile had 77 prison-jails.

113 Under President Balmaceda (1887-1891) there was an attempt to centralize prisons, removing it from the control of the judiciary and municipalities and creating a Prison Directorate in 1899 (M. A. Leon Leon 1997). A board of directors composed by members of the judiciary and the Justice ministry was put in charge of the prison but continue the limited governance of prisons but with limited control over prisons. In the next decades, prison building continued but the system of prisons remained disorganized and atomized.
political agents were not interested in controlling them, leaving them in the hands of guards and private contractors (Fernández Labbé 2003:91). In 1919, prison guards militarized and formed the “Prison Gendarmerie.” However, nothing changed beyond militarization of guards. According to a contemporary observer:

the inmates receive no training, nor counseling, they work in what they want, they are governed through terror, they live in promiscuous conditions; the direction of each prison is in the hands of uneducated individuals, with no special studies; they are mostly political newcomers, ignorant; buildings, with rare exceptions, are in ruins, their distribution does not obey any general plan of security, hygiene or comfort; guards are formed by the worst part of our people given the poor salaries, which make it impossible to improve their quality (Leon Leon 2003:III,873).

In the 1920s, just as in the other sectors of the criminal justice system, everything began to change. 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 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 805/1928 in Leon Leon 2008:448-474). In the 1930s prisons were re-classified as penitentiaries, presidiums of various categories, jails, women’s prisons, and juvenile correctional schools; and prison wardens were placed under the permanent vigilance of inspectors. In 1931, the General Prison Directorate became a paid and stable position that governed all custodial institutions (Decree 1811/1931).

After General Ibañez´ removal in 1931, the Prison Directorate began to develop a correctionalist logic for prisons. During Alessandrí’s second administration (1932-1938), medical doctors, social workers, and pedagogues entered the prison administration, claiming control of prison routines, and of labor routines in particular. These professionals consolidated their position under the Popular Front governments between 1938 and 1952. By the late 1950s, the carceral field presented a more complex structure, where the executive branch and the legislature, as well as prison officers, began to share control over prison policies with directorate members and prison professionals.

Even if in 1911 the government again passed a general ordinance that mandated a unified regime, but the measure was merely symbolic. Prisons and jails remained run by politically appointed wardens concerned with custody and private contractors concerned with profits

114 The first General Directors created schools within prisons (Decree 2078/1934), organized the training of crafts, creates workshop for the family of inmates and passed regulations ordering the removal of prisons records (Decree 402/1932).In the previous decades pedagogues have become highly respected, in line with the expansion of primary and secondary education. In 1934, a penitentiary reform program published in Santiago argued that “if one considers presidiums not as sites of punishment but of reeducation, it is natural that they will be directed by pedagogues” (Tour de Hameau 1970)

115 Since the late 1920 administrators begin fighting the “disorderly effects of mere profit of contractors” and redefine work from a means to acquire skills in a manufacture economy into a means for cultivating docility and the love for work as a means to reduce crime and construct a new identity” (Fernandez Llabe 2003: 91).
Within the prison administration middle-class professionals, lawyers, and doctors, advancing a penology and criminology discourse, gradually acquired more power. They were benefited a new general conception of the bureaucratic field, initiated in the 1930s oriented to regulate, and not merely repress, the mobilized working classes. During the Popular Front administrations (1938-1952), correctionalist professionals—initially lawyers—consolidated their positions within the prison bureaucracy. In 1940, President Pedro Aguirre Cerda appointed lawyer Julio Olavarría Avila to direct the service. Counting on the insulating protection by the Radical Party, Olavarria led the prison directorate until 1952. His mandate survived three different presidents, a period of constant cabinet changes, and economic upheaval (Correa et al. 2001:129–130). He passed new regulations and created positions for professionals and officers that allowed for the consolidation of new sources of authority over prison and penal policies. By the mid-1940s, the General Directorate was able even to shield the government from popular pressures to repress common criminality (Leon Leon 2003:260–264) and was commissioned a penitentiary code draft.

By the 1940s, medical doctors and criminologists had also become central actors in carceral affairs, and building new institutional power bases, they promptly laid claim to greater participation in decisions about prison routines and policies (Leon Leon 2003:233). During the 1930s, psychiatrists and statisticians had revived the Institute of Criminology—created in 1919—and began classifying inmates and producing reports used by judges to decide on early-release petitions. In 1935, the General Director and the Institute Director launched a specialized journal, the Revista de Ciencias Penales, “for lawyers, criminologists and students of penal sciences” to divulge the “principles of modern penal science” (Matus Acuña 2011:59). Two years later, they created the Institute of Penal Sciences, a private study center, which counted on the participation of figures of the judiciary, the University, the Administration, the legal profession, medical education and profession, who give birth to this association that aims to concentrate in the study of the complex set of disciplines related to delinquents.

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116 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” (Fernández 2003:172).

117 Director Olavarría Avila objected both the “reproachable egotism and an anti-christian” sentiment of vengeance as well as the “sentimental and romantic compassion” of the public, proposing instead reference to “serious and truthful statistics.” He also criticized the view of legal scholars who resorted to “theory, speculative idealism of easy expansion” which had to give place to “not-that-brilliant-but-more-measured knowledge of those who day after day manage prisons” (Olavarría Avila 1946). In 1946, the Director gets himself commissioned to draft a “Organic Penitentiary Code” independent from the new penal code—entrusted to a criminal law and criminology scholar, Luis Cousiño Mc Iver. The penitentiary code was to supplant the still relatively ineffective Carceral Regulation of 1928, based on the better “general doctrine, local and foreign and the recommendations of experience.” Instead, he proposed a simpler regime with criminologists dictating individualized treatments, classifying prisons according to penological and not legal standards, between prisons for the “abnormal, sick, and incorrigible ones” following criminological categories, rejecting biological determinist and highlighting the social origins of crime.

118 They followed the work of their pioneer counterpart in the Penitentiary of Buenos Aires, José Ingenieros, and claimed they deserved a place within prisons citing the “[Devoto] Jail of Buenos Aires, and the Model Penitentiary of Sao Paulo” (Cubillos 1940).
and its anti-social impulses, to propel reform and progress of penal institutions recognized in our legislation and to point out those who must be incorporated to them (Matus Acuña 2011:61–62).

The first directors of the Institute of Criminology, Dr. Israel Drapkin and Dr. Bruchner Encina, were trained in the medical sciences and in criminological positivism. They integrated positivist views with sociological and psychological causes to explain crime (Bruchner Encina 1941; Leon Leon 2003:287), in what was later called a “pragmatist approach to criminology” by the third director of the institute Gonzalez Berendique (see Gonzalez Berendique 1974). Through publications and institutional work, a consensus began to take shape between administrative, professionals, academic and political agents within the carceral field, framed under the conception of “social defense,” and rehabilitation.

Even is these lawyers and doctors who had controlled the prison directorate between 1945 and 1952 lost the political protection of the Radical Party under the second presidency of administration of Ibañez del Campo (1952-58), the incoming directors of the prison administration and lawyers from the administration continued to be part of prison policymaking circles. In 1956, Darwin Haz, a long-time legal advisor to the Director, along with criminologist Drapkin, worked together on the “Prison Council,” a special body in charge of “studying the planning of penitentiary policy applicable to prisons and special penal establishments” (Decree 2038/56). Even if the director and many top positions where filled with political acolytes (Parra Cares 1971:146), during Ibañez’ administration the consensus around the “reeducating and regenerating prisons” persisted.

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. The penitentiary officers, in contrast to what happened in Argentina, were demilitarized during the 1940s and became “penitentiary technicians, with specialized training. Even the more culturally militarized “Prison Gendarmes” became the “Prison Security Service” (Servicio de Vigilancia), formed by “warders” (“vigilantes”). The corps of prison officers—in the sense of high rank officers—were reorganized into two categories: custody officers (a minority), and administrative officers (the majority), in charge of personnel, logistics, work, and inmates within the prison. By 1960 both the prison officers and the rank and file guards presented themselves as

120 Prison criminologists and penal scholar at the University of Chile Law School wrote the “Law against Anti-Social Elements” in 1954, which ordered the detention in special establishment of alcoholics, homosexuals, vagrants, drug addicts, repeat offenders who would be interned in working houses or agricultural colonies or subject to special measures of surveillance under the control of the Ex-convicts office (Law 11,626). The law was promptly repealed, but its mere passing demonstrates that criminologists and legal scholar imbued in the doctrine of social defense had a central position and participation in prison and penal policies.

121 The prison wardens (“alcaides”), in charge of prisons, since 1944, received special initial and on the job training. The initial training deal with administrative regulations, medical perspectives (“prison hygiene” and “criminology”), and legal knowledge (“criminal, administrative and procedural, law” in Leon Leon 2008:510-514).
“civilian” employees, technically capable and embodying a bureaucratic tradition distinct from that of the military (Parra Cares 1971: 29), going so far as to reject the use of weapons and the military echoes of their grades (colonels, lieutenants, etc.). They were in charge of keeping order and performing the multiple penological and administrative functions. Beginning in 1954, they were trained in a “Technical School for Prison Officers” that aimed to produce “specialized personnel able to correctly apply treatments” (Leon Leon 2008:567-569). Prison criminologists and lawyers from the directorate instructed them.

Central government administrators in the justice ministry, prison officers and professionals working in the prisons, and criminologist and legal scholars in the academy continued to dominate prison policy-making during the presidency of Jorge Alessandri (1958-1964), and they began expanding their know-how to other custodial institutions. They wrote the “Organic Prisons Regulation” (Decree 189/1960 in Leon Leon 2008: 606-607), where they defined prison work as “social defense, not that classic defense of the law where the legal order was reestablished without being concerned with the person of the criminal.” (Peña Nuñez 1960) The service was put in charge of “anti-social elements and persons in irregular situations, with the aim of obtaining their readaptation, eliminate or diminish their dangerousness and take care of the moral and material needs, in collaboration with other services.” (Peña Nuñez 1960:64) The General Director controlled prisons for adults, juvenile offenders, and women, as well as post-release centers. Rehabilitation was integrated within a welfare logic of inclusion and material protection, so that inmates and their families were both assisted and controlled.

The authority of criminologists and legal scholars and “treatment oriented” bureaucratic officers was such that in 1964, under the presidency of the Christian Democratic reformist administration of Frei, the Prison directorate, its lawyers, and head criminologists and professionals of the prison, wrote a new and detailed set of prison regulations that incorporated the “Minimun Rules for the Treatment of Prisoners,” established by the United Nations First Crime Prevention and Treatment of Convicts Congress in 1965 (Decree 3140). Statisticians, social workers, craft teachers, school

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122 Whole chapters of Parra Cares, a retired officer in 1970, are devoted to “the Penitentiary Officer,” and to “Consideration on the role of Prison Warden” with suggestions for the next generation of officers
123 Custodial functions are combined with “an overwhelming number of activities”, from keeping the number of inmates and surveillance, to “annnotations 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” (Parra Cares 1971: 144-145). A possible reason for this agreement among officer, is that in practice there was no important division between the administrative and custody officers, where all were devoted to “keeping prisons calm” (Parra Cares 1971). Indeed, since 1960 they were designated “security and treatment” officers and subordinates.
124 The Juvenile department will “control …and treat” minors in “irregular situations, meaning “those who lack of attentions and care that their personality requires..given unsatisfactory life, personal or environmetal conditions”, while the “social welfare department” would “adopt measures oriented to avoid the negative effects of prison over inmates, on remand or condemned and their families, help those who exit penal establishments, control those on parole, protect and aid victims of crime and their families, aid prison personnel” (Peña Nuñez 1960:68–69)
125 The new regulation established a progressive regime based on dangerousness and possibilities to readapt, and treatment aimed to “inculcate the willingness to live in a lawful manner, support themselves with the product of their labor and create the conditions to do it, as well as acquire self-respect and responsibility”. It also incorporated the Christian Democratic aim of “inculculating an adequate view of
teachers, medical doctors, priests, and even prison officers were put in charge of classifying inmates through the “inmate’s dossier.” “Conduct courts” produced monthly evaluations and decided which inmates could be candidates for parole. In the 1950s and 1960s, the old and new criminologists became permanent interlocutors in discussions surrounding prison policies and prison routines, occupying relatively high positions in the field, reinforcing the more heteronomous pole.

As they consolidated their position, Directors of the Prison Administration bureaucrats and prison officers started demanding even greater resources and influence in other areas besides prison administration. In 1967, the director of the Santiago Penitentiary Institute of Criminology, Marcos Gonzales Berendique, demanded “greater participation of penitentiary specialists and the Ministry of Justice” in presidential pardons, and he both criticized and proposed new prison policies. Beginning in 1963, criminologists experimented with new daily release programs where temporary exits from the prison were granted under oath of return (Gonzalez Berendique 1964; Parra Cares 1971:159). Following developments in Argentina, Brazil, and the US, these criminologists within the prison also proposed combining custody with probation, parole, and weekend prisons (See Gonzales Berendique 1967). By the late 1960s, even prison officers were deeply involved in advocating for new policies that reduced custody, such as labor colonies or day release programs (Parra Cares 1971:128).
Figure 4-7 Carceral field Chile, circa 1970

Juridical Field

Appellate Courts (Santiago)

Institute of Penal Sciences

University of Chile Law School

Bureaucratic field

Penitentiary Service Directorate Director (Lawyer)

Treatment professionals

Administrative Officers

Custody Officers

Political Field

Executive Branch Allende

Legislature

Academic Field

Journalistic field

Penological orientations

security and order concerns
The correctionalist program suffered mostly from a lack of resources: too few prisons, workshops, technicians, personnel, as well as poor training, limited budgets, and overcrowding (Gonzalez Berendique 1967). While the correctionalist experts and government experts demanded more resources and recognition, prison officers and guards organized themselves so as to lobby for improved working conditions. Beginning with mutual assistance societies in the 1940s (Mutualidad de Prisiones 1953), they unionized in 1960 to demand higher salaries, better working conditions, and professionalization (ANFUP 1968). They demanded to stop being treated like the “poor relatives of the administration” (Parra Carres 1971:48) and wanted an end to “the exploitation of men by the state” (ANFUP 1968:4). Given the low payment and extended work hours, in the late 1960s the custody officers began expressing “a frustration in penitentiary aspects, as the officer ends up being nothing but a guardian.” (ANFUP 1968:4) In the face of growing prison populations and a lack of political investment, officers in the prison blocks had to deal with run-down, overcrowded conditions, knowing that “inmates are armed with knives […] afraid of a massive attack” (Parra Cares 1971:45).

The 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. During his short tenure, Allende followed the advice of the correctionalist experts within prison. Following the research produced by prison experts, the administration made the granting of parole easier. Allende also created open “penal colonies” and expanded the weekend-release program. By then, the liberal sector of the “new penal dogmatic” groups at the University of Chile Law School, as well as judges, demanded that prison parole boards be staffed by “specialists in criminology and penology.” They also insisted that the Ex-Convicts Offices be given more resources to hire full-time parole officers “that would control the fulfillment of parolees of their duties but also to help them to fulfill their social readaptation and reintegration” (Grisolía and Vivanco 1973). Under the effervescence of the time, and in line with generalized social mobilization, younger criminologists from the Universidad de Chile Law School Criminology Research Center elaborated even more radical alternatives. The socialist government also gave officers and guards better

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126 In 1960 the organized a union, and in 1961 they held the First National Prison Wardens Conference, where they discussed penitentiary and labor matters. They declared that the role of the prison officer was both custody, classification, education, and treatment of inmates, and that the prison had to follow a progressive regime based on labor, promoting public workshops and the aid of private contractors. They demanded selection standards for officer and guards, admission criteria, with a new professional guard that would have “a humanistic culture, character, vocation and special skill” and demanded authorities to “to close the access of high positions to individuals who do not pertain to the service”. They also began asking for better salaries, extra-pay for dangerous works, or payment for working on weekend, nocturnal work.
127 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” (Parra Cares 1971: 163).
128 Indeed, following empirical studies on the effects of conditional sentences in reducing recidivism, in 1972 Law 17,642 made it applicable to sentences of up to three years of prisons (Gonzalez Berendique 1981).
129 According to the report of Gonzales Berendique, they proposed a “new praxis that involved the active participation of subjects within groups and social organizations, collaborations with organizations of
salaries and recognized them of their right to be paid extra for their risky work. They were placed on par with police officers when it came to adjustments for seniority (Decree 1/1971).

While prison officers (Parra Carres 1971) and old professionals (lawyers, doctors and criminologist) within the prison bureaucracy (Gonzalez Berendique 1974), where occupied building prisons that would create shape the “new man” of Chilean socialism (Parra Carres 1971:151), the distance between project and reality remained insurmountable. The carceral field of 1973 was still dominated by political interest and priorities. Political authorities, however, appeared to be indifferent to prison issues, rather than constantly penetrating the prison administration and interfering with institutional developments (as was the case in Argentina). Between 1940 and 1960, the administration barely increased its personnel. The Alessandri administration (1958-1964) and the governments of Frei Montalva (1964-1970) increased prison personnel. Even if Allende (1970-1973) appeared concerned, he was unwilling to invest in improving prison conditions or in improving the lot of wardens, criminologists, or guards. (Even if more research is needed, the the reason for this indifference may lie in the chronic budgetary crisis of the Chilean state between the 1940s and 1970s, combined with a certain disdain of parties representing the middle-classes and the formal working class for the conditions of the urban and rural poor in this period.)

Table 4.1 Evolution of prison personnel, Chile 1940-2010

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<tr>
<td>Personnel</td>
<td>1920</td>
<td>1999</td>
<td>2500</td>
<td>3437</td>
<td>4673</td>
<td>4900</td>
<td>5000</td>
<td>5011</td>
<td>10537</td>
<td>14297</td>
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<tr>
<td>Prison Populat</td>
<td>13709</td>
<td>21000</td>
<td>22593</td>
<td>20962</td>
<td>33050</td>
<td>37033</td>
<td>56651</td>
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<tr>
<td>Budget capture</td>
<td>0.25</td>
<td>0.26</td>
<td>0.72</td>
<td>0.78</td>
<td>0.7</td>
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Source: Valenzuela (1971); National Statistics Institute, Chile.

The limited budget, used mostly for salaries, resulted in understaffing and ruinous prison conditions, with limited services and care. Under these conditions, prisons were almost constantly overcrowded, with guards being able to provide little oversight over inmates, who were left to develop their own social structure. In the mid-1950s, according to the memories of a former inmate (Vivert 1957), the Santiago Penitentiary had prison regime with reduced legal regimentation and limited isolation from the outside, relying on collaboration between inmates and guards to preserve prison order, as it has been the case in most “big houses.” Inmates were separated based on whether they were on remand or were condemned, but nothing more. Prisoners worked on their own and went to class, as education and good behavior were essential to obtain an early release.

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inmates and ex-convicts, public relations campaigns, associations with labor unions, and people’s courts” (Gonzalez Berendique 1974)

130 The state was unable to control the cycles of expansion and contraction of the economy, solving it via permanent inflation. On the other hand, in the decades between 1930 and 1970, the welfare state grew much more than the penal state--except for the police. Welfare personnel increased from 32% in 1932 to 45% in 1967, while central government personnel, where prisons were located, reduced its participation from 61% to 38%. Between 1925 and 1964 the Justice Ministry received around 0.5% of the budget (Faundez 2007:131).
Prisoners were not isolated at night and organized nocturnal routines as they pleased. During the day, guards dictated the general rhythm, providing meager breakfasts, lunch, and dinners. Guards, despite their rhetoric, were not engaged in any treatment activity other than providing small work (Vivert 1957). Prison inmates, chronically recruited from the lumpenproletariat in Chile, did not developed the sense of dignity that Peronism gave to lower and marginal classes in Argentina.

The objective limitations and poverty of the prison bureaucracies and bureaucrats contrasted with their subjective optimism in the early 1970, which reflected the sudden increased in prison personnel. As Rothman and Cohen argue, in the face of failure, reformers and politically designated managers formed a new “symbolic alliance” that allows “programs to survive even if they seem abject failures” (Cohen 1985:21). As I show next, this symbolic alliance continued during the dictatorship, integrating new experts, monetarist economists.

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

In Chile, in contrast to Argentina, during the dictatorship the prison was highly marginal in routine political repression. The marginalization of the prison in political repression, the continuity of correctionalist professionas within prisons, the Prison Directorate and the judiciary preserved the ideology of rehabilitation. 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—namely, the neoliberal economists. Very soon these experts exploited the gaps between previous promises and plans, and invested heavily in reinforcing and preserving the discourse of rehabilitation and the 1960s experiments in community sanctions. At the same time, the continuity during the authoritarian regime of positions and even incumbents within the prison administration prevented the development of any strong critiques against it.

Unlike that of Argentina, the Chilean prison administration was not central to the dictatorship’s projects of political repression. Political prisoners were less numerous than common prisoners, unlike in Argentina, where they were equally numerous. This allowed for a renewal of the correctionalist program during the dictatorship, under the protection of the neoconservative economists and legal scholars in government. In Chile, political repression, as we saw in chapter two, evolved from initially disorganized repression to a greater concentration in specialized bodies of the armed forces, the police and the newly created National Intelligence Directorate (DINA). This change in strategy reduced

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131 In 1971 Parra Cares, a former warden describes prisons in similar terms: limited classification except for women and juvenile delinquents; tranquil in both descriptions, even if guards, in 1971 appear fearful of numerous attacks of armed inmates.

132 Here agents participated in the symbolic alliance not with a calculated cynicism, but a combination of interest in the rewards of the field and a tolerance and accommodations to failures, limitations and to the usual negation and self-censorship.

133 In “this first phase of massive advance over everybody could be considered a political enemies, many were executed without trial or through vitiated trials, helpless prisoners were assassinated alleging “attempted escapes,” massive arrests were made, who accompanied those who had turned themselves in after being asked to present to certain officers though the media, and industries, universities, public
detainees, as DINA “did not hold large number of prisoners in large detention centers…. Instead it kept prisoners in smaller, secretive locations” (Policzer 2009:92).\textsuperscript{134}

In this case, even if the army easily took control of the prison administration, it increasingly left it in the hands of civilians. 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. It did not even want to recognize prison forces as “militarized units,” or give them an important role in political repression, thus treating them 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. Pinochet initially put an active colonel in charge of the prison directorate, but replaced him in 1974 with a lawyer from the Army, Officer Novoa Carbajal. The first director of the dictatorship era was Colonel Pedro Montalva Calvo a counterinsurgency expert.\textsuperscript{135} He changed the name of the prison service from Prison Directorate to Gendarmería de Chile (Gendarmerie of Chile), as well as that of the officers’ school (Decree 842 of January of 1975). The new designation was justified both “for reasons of historical nature as well as for the need to revitalize the professional mystique of the institution” (Decree 842).

The need to boost the guards’ mystique, patriotism, and love for the fatherland makes sense within the (very limited) role of prisons as part of a network of institutions involved in detention, torture under interrogation, and selection. Prisons received and guarded prisoners from the police and courts, but also from the armed forces and from DINA. In some prisons, political prisoners were tortured to extract information or to incur damage, but in most cases prisoners were detained in prisons for custody alone, and were extracted and then returned by special groups who interrogated (and tortured) them (Comisión Nacional sobre la Prisión Política y Tortura 2004:chaps. 4 and 6).\textsuperscript{136} As a result Chilean prisons under the dictatorship were not considered one of the fronts of the counterinsurgency war as in Argentina. In the late 1970s, Pinochet himself put a stop to the militaristic longings of some prison officers. When discussing the new general organic law for Gendarmeria, Pinochet demanded that any military references be removed and that it be defined as a strictly civilian institution.\textsuperscript{137}

\begin{quote}
building, farms and miner where raided, in the provinces and the capital.” (Comisión Nacional sobre la Prisión Política y Tortura 2004:192)
\end{quote}


\textsuperscript{135} Montalva got trained by the US military in Panamá, was Deputy-director of the Army Infantry School of San Bernardo in 1973, in charge of a detention center until December of 1973 (P. Rojas et al. 2001:65).

\textsuperscript{136} The same report describes victims of tortures returning to prisons and others removed in the middle of the night to be taken to torture chambers outside prisons. Within prisons in most cases political prisoners were kept separated from common criminals, but treated with more severity, vigilance and harshness. Wardens, but especially guards, began treating political prisoners with a violence and harshness that does not appears in previous document. In the mid and late 1970s guards became enormously despotic and abusive. Prisoners would receive less food, clothing, visits and readings, and punished with greater severity.

\textsuperscript{137} According to his own words: “Gendarmería 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.” (Junta de Gobierno 1979:2)

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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). But the new law reflected not just the rejection of the military and the police for the prison service, but also the advancement of the civilians sectors of the government over the prison administration. Indeed, the early references to “historical reasons and professional mystique” primarily reflected the influence of conservative legal scholar Jaime Guzman, the main legal ideologist of the authoritarian regime, creator of “gremialismo.” Guzman was a Catholic ideologue, involved in student politics of the Catholic University in the 1960s. Following conservative Chilean writers of the 1930s, he was nostalgic over the loss of control of the state by the aristocracy—he espoused a Christian corporatist view of society where a number of social bodies (family, unions, corporations) mediated between the individual and the state. He favored a return to local authority and to regionalism, and believed in the importance of intermediary bodies, whether they were experts—like the economists—or members of professional corporations, like the prison gendarmes (Correa Sutil 2004:295). The neoliberal economists that took control of the economy and state in the mid-1970s were also “gremialistas.”

The gremialistas took control of the Justice Ministry as early as 1975 when Miguel Schwitzer, a long-time member of the Institute of Penal Sciences who was close to the gremialista groups, arrived. Following Guzman’s preferences, he regionalized prisons. Following the demands of gremialista economists, he set up Labor and Education Centers, to “train inmates in the crafts that regional economies would demand” before he left in 1977 (Decree 42 of 1977). In 1977, Monica Madariaga, a lawyer and cousin of Pinochet’s who had worked in the General Comptroller Officer, became Justice Minister. When she arrived, she found the neo-conservative economists planning a massive revamping of the criminal courts and prisons. The Under-Secretary of Justice was Juan Folch, also from the Gremialist group close to the neoliberal economists.

The institutionalization of neoliberal economics aimed to change the economy, but also the state and the societal order. We already saw in previous chapters that 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. Their reshaping of the state was possible thanks to Pinochet’s backing, and was executed by way of studies and the training of bureaucrats. The studies and training took place in the Planning Office (ODEPLAN), which funneled money into the Catholic University for research and training under the leadership of Miguel Kast. 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, 

138 In the gremialista perspective professional groups and technical experts had a central place, as providing their own views and actions, but in a way that contributed to the common good, and not as self-interested bodies.

139 In his perspective the state, had to allow for the “autonomy of those intermediary body” adopting the principle of subsidiarity, where more general bodies had to assume control of social activities only when more “natural” and simpler could not adequately deal with them; the principle of individual freedom, where private property is a natural fact; a belief in the transcendence of the nation, which he identified in the case of Chile a medieval Hispanic heritage, combined with a modern geopolitical demands to assure it survival (see Sofia Correa Sutil 2004:292–296)
education,) and economic issues (industrial and agricultural markets), which would later serve to frame and support the privatization of these state sectors (Vergara 1994:241). 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. In 1978, the ODEPLAN team produced a long report with a cost-benefit analysis of “alternative solutions to the prison” (Dirección General Gendarmería 1978).

Justice Minister Madariaga implemented the ODEPLAN program for prisons and courts between 1977 and 1982. She took a team of ODEPLAN advisors to the Justice Ministry (Gonzalez 1985:16). In line with the ODEPLAN policy for destroying unions, she cancelled the authorization for the penitentiary personnel union in 1977. In 1979, when the government passed a new general statute for the Gendarmería, the organic regulation of Decree 2859 of 1979 incorporated managerial capacities and know-how into the organization, reflecting the ODEPLAN strategy of placing managers throughout the state. 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. The Deputy-director of Administration had to “make sure that personnel and material resources would be rationally assigned,” while the “Planning Division” housed an ODEPLAN trainee. For similar reasons, and in line with the “principle of subsidiarity,” the organic law not only preserved a correctionalist perspective, but also instituted community sanctions—it had a department in charge of alternative sanctions and another in charge of rehabilitation (Ch. 6). In 1980, after the passing of the law, ODEPLAN and the Ministry of Justice produced another study (Ministerio de Justicia de Chile 1980). In it, the neo-conservatives preserved community sanctions developed during the late 1960 and early 1970s to “reduce the social-economic problems derived from custodial sanctions” (read costs) with “non-institutional means, like parole and collaboration with the community and “semi-institutional means” like night or weekend prison” (Ministerio de Justicia de Chile 1980:143).

The ascent of both military officers unwilling to fully militarize the force and the preferences of economists for rehabilitation preserved the position of correctionalist experts within the prison administration and the centrality of the correctionalist perspective within the field. 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 Gonzalez Berendique 1981). 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.

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 (Gonzales Berendique 1981:251).
This alliance set for itself the objective of reviving the correctionalist and communitarian programs.\textsuperscript{141}

In the following years, and in line with the new consensus shared by old correctionalists and new management experts, the government reclassified custodial establishments, built new prisons, introduced a novel parole system, and developed new treatment techniques. Economists were living the neoliberal dream of expanding the control net at low cost, and prison officers fulfilling and making real their community sanctions programs. Between 1981 and 1989, prison beds grew from 10,000 to 18,000 (Ministerio de Justicia 1989) and prisons were reclassified.\textsuperscript{142} Since 1981 Presidiums and penitentiary turned into 30 “Centers for Social Readaptation,” prisons into 50 “Centers of preventive detention,” 12 female correctional centers into “Centers for Female Reorientation,” and three newly created “Labor and Study Centers,” as well as a transition house became “Open Readapatation Centers.” The government will create a huge “Social Readaptation Center” in Colina, near Santiago, which was presented as a model center in 1981 with places for custody and treatment (Ministry of Justice 1982).

\textsuperscript{141} Cohen describes a similar convergence in the US and Great Britain in the early 1970s between penologists favoring community sanctions and neoliberal experts interested in the reducing prison costs (1985:104–105).

\textsuperscript{142} In 1987, the government continued building the different categories of building according to “Methodology for identifying and prioritizing investment project in carceral infrastructure” (Ministerio de Justicia 1987).
New Labor and Study Centers were to be run like private companies—with investment in research, planning, inventory, and recruitment of worker-inmates. Also, these centers were meant to be self-sustaining. Inmate training needed to be tuned into the needs of the “regional economy.” By the mid-1980s, six farming colonies were in place, providing work for agricultural and fishing activities, and some even financed themselves (Cooper Mayr 1987).

In 1983, the government created a parole service, and regulated nocturnal prisons and probation. The veteran prison directorate bureaucrat, criminologist, and law professor, Marcos Gonzalez Berendique, wrote the act. The executive branch also merged criminological and managerial-economic concerns in its granting of pardons. Law 18,050, passed in 1982, mandated that pardon petitions must be processed within a maximum of 90 days. Besides police files (as was required by the 1959 regulation), the new law also required a “technical report” produced by the criminology service, and a report “related to the profession or occupation of the petitioner and his possibility of getting a job upon release.” The correctionalist experts within prisons—social workers, psychologists, sociologists, and occupational therapists—continued systematizing their observations and publishing their studies of the inmate population. Very soon they devised new treatment programs and updated their classificatory procedures to deal with the deviants of the new flexibilized economy.

143 In it he gave judges the right to impose treatment and observation with a minimum of three years and a maximum of six and the possibility of ending them on the bases of the social and personality report, produced by the Technical Council of Gendarmeria. Prison professionals could serve as parole officers.

144 They published new studies of their experiences in the new Centers for Social Reintegration (Ministerio de Justicia 1982), in the new Female Reorientation Centers (Villagra Ortega 1983), returned to study homosexuals, the mentally ill, families of inmates (Cáceres Espinosa 1983). They published works...
Penological expertise also evolved outside the prisons, in the novel form of parole and in the “treatment in the community” Department (Departamento del Medio Libre). Community sanctions were rationalized and framed in the language of social sciences, reinforcing the position of criminologists (Gonzalesz Berendique 1984), social workers (Soto yañez 1982), and psychologists. The Community Sanctions Department, after a period of incubation forming new personnel “with no budget at all, and where the pioneers, learned that they had to mobilized all the community resources” (Maria Ines Hofer, program director in 1980, Interview, July 2009), the department began producing its own bureaucratic research in the mid and late 1980s (Departamento de Tratamiento Medio Libre 1986), rapidly codifying and formalizing the work of parole officers (Perez Benavidez 1986). The parole service grew from controlling 50 parolees in 1982 to 1,500 in 1989, controlling 10% of the population under judicial control. As social-science corrections experts preserved their limited power within the administration, they also were able to spread it by way of their studies and collaborations with universities and research centers, where future prison professionals received their training. On the basis of these studies and relationships, in 1987 the Gendarmeria organized a symposium inviting university professors to discuss the “causes of crime from different disciplinary perspectives” (Gendarmeria de Chile 1988).

The continuity of correctionalist experts given the protection of economists and the continuity of the correctionalist-communitarian paradigm did not mean that the Prison Directorate and the professionals within it they became dominant within prisons and within the carceral field at large. The Prison Personnel Statute of 1983 preserved the dominant positions within prisons to penitentiary officers. From their still dominant position in the organization, the penitentiary officers reinforced security capacities and training. However, in the end, both these officers and the correctionalists remained marginalized by the central government and dominated within the field. Prison officer lost their union and received only scant material improvements in the 1980s. They remained secondary to the demands of the central government, controlled by the military, and subordinated within the justice sector to conservative lawyers and liberal economists.

Throughout the seventeen years of military dictatorship, the core structure of the carceral field, with a dominant executive branch and a dominated directorate of prison services. Within this highly hierarchically structured field, the consensus around custody and rehabilitation, now combined with a managerial logic, was preserved within and outside prisons. The prison administration remained subordinated to political agents, but claiming the new centrality of social workers (Caro Ramirez and Olea Vergara 1983; Olmos Ortiz 1983) and began with national meetings during the late 1970s and 1980s (Olmos Ortiz 1987). After refining the appropriateness of the “Social Dangerousness Scale” to classify and segregate inmates (Nuñez Machuca 1983), in 1984 the directorate approved a new “Correctional Treatment Integrated System,” organized around a progressive regime, that encompassed the “social dangerousness scale,” within a treatment program based on psychology, pedagogy and labor-therapy (Larrain Barros 1984).

Many professionals circulated between the prison system and the university, in psychology, sociology (Cooper Mayr 1987), law, social work. Many students in this discipline also circulated from the school to positions in the prison administration.

The uniformed officer changed their gray uniform for olive-green, got special training in security, and emphasizing a new occupational perspective centers publicly in the service to the fatherland and a vocation of sacrifice (Alfaro Parra 1982). They created special weapons and assault teams to deal with political prisoners and transports (Novoa Carbajal 1986:6).
the military party in power adopted and followed the perspective of the old correctionalist experts, continuing with the notions of “social defense” (Junta de Gobierno 1979) and of rehabilitation and adaptation (Novoa Carbajal 1986).

In this context, in particular after 1985, how political prisoners were handled was just another dimension of the many changes in crime and punishment landscape, along with “the new juvenile delinquency of youngsters lacking any predisposition to work, education; …the increase in the average lengthening of sentences; the increase in prison population; the creation of new courts which need attention and protection; [and the novel] alternative community sanctions” (Novoa Carbajal 1986:3). 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” (Cohen 1985), pointing to buildings, community alternatives, and innovative treatment programs. Judges also shared these views, even if through conservative lenses. They controlled parole, deciding its application and termination on the basis of criminological reports.

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. The increase in policing powers, the expansion of the courts, and the reduction of investment in buildings and personnel “congested” prisons—that was the word—while the number of guards and officers remained static. Overcrowding in the late 1980s and the expansion of prisons rendered treatment impossible. Still, most agents in the justice administration, in the school of law, and in the prison administration continued to uphold their belief in correction, minimizing existing critiques to the post-transition prison.

This scenario is very different from what we saw with Argentina’s transition to democracy, and is important for understanding the evolution of the field in democratic times and of prison policies more generally. 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 and community alternatives. As a result, just as the right-wing neoconservatives 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 transition preserved the expanded prison (and parole net) under democracy, continuing to work out the “modernization process” along the lines put in place by the neoliberal economists of ODEPLAN in the late 1970s.

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147 It is eloquent that the director in 1986, a military colonel present itself as a penitentiary professional a member of “a complex, difficult and never fully comprehended profession” demanding more resources and the more personnel and social security benefits (Novoa Carbajal 1986)

148 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.
4.3.3. 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 and community options. Human rights activists and legal scholars renovated these programs of rehabilitation, framing them in terms of human rights, while economist and neo-conservative groups continued favoring those same policies while insisting on managerially efficient and market-friendly solutions. Democratically elected and appointed political agents at first backed the human rights groups and seriously invested in improving the correctionalist program and community sanctions. But, as political electoral dimensions became more salient, rehabilitation concerns became subordinated to security concerns, and the correctionalist programs were gradually abandoned.

4.3.3.1 Democratic transition: human rights experts enter the symbolic alliance

In this subsector of the criminal justice, unlike in the police and the courts, the executive branch inherited a dominant position after the transition to democracy based on its control of the budget and nomination of the upper echelons of the prison bureaucracy. Thus, the government did not invest many political resources in order to gain control, nor did it devise any grand reform program, as it had done with the police and the courts. Right after inauguration, Aylwin simply appointed a retired deputy-director as director and straightforwardly removed the upper echelons of the administration. The initial official policy consisted mainly in “provide more resources to the prison administration” (Aylwin 1990). This increase in resources was targeted to fulfill its political need to prevent left-wing political detainees from escaping.  

Unlike in Argentina, given the previous reduced participation of the prison in political repression, the transition did not produce massive mobilization of common prisoners demanding presidential pardons or judicial actions. At the same time, the prison enjoyed a great deal of acceptance among political elites and experts within the field. After an escape of political detainees in late 1991, the president announced that he wanted to “humanize the carceral system in order to be able to rehabilitate inmates and improve the functioning of detention centers,” (Aylwin 1992:15–16). The focus on

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149 In early 1990, two months before the inauguration, members of the radical leftist organization Frente Patriótico Manuel Rodriguez escaped from the Santiago Jail. While on the one hand the president pardoned political detainees who have been detained up to transition, on the other, the continuity of terrorist groups, lead to providing guards and officers better weapons, bullet-proof vests, and vehicles to transport prisoners. In 1991 the government began building a maximum security prison for where political detainees concentrated.

150 Political prisoners were less that 400 among the 25,000 inmates, and they have been concentrated in a few prisons. Common prisons were less politicized than in Argentina given the fewer historical instances of massive political repression, the concentration of political repression in a few forces, the reduced use of imprisonment for political reasons during repression, and the concentration of the few political prisoners in some prisons in the late 1980s, as well as the reprimands of guards and officers to any attempt of collective organization. The administration prohibited any form of collective organization—except for soccer league delegates, and severely sanctioned any attempt through massive and violent searches.
“humanizing” prison reflected the need to legitimize the harsh treatment given by the democratic authorities to political detainees, but it also reflected the work of the human rights activists and the legal scholars who began investing in the field during the first two years of democracy.

We have already met the first group. These are the legal scholars working on criminal procedure reform at Diego Portales Law School, who in the early 1990s formed a “Criminal Policy Association” led by Juan Bustos Ramirez, the criminal law scholar and criminologist, and by Jorge Mera, the human rights scholar; they were assisted by a young Cristian Riego and Juan Enrique Vargas, whom we also met. The association put the issue of human rights at the center of discussions over prisons and “crime policy that would respect human rights” (Asociacion de Política Criminal 1991a:9). They deployed the same mix of empirical analysis, critical criminology, and human rights critiques they used to critique criminal procedure.\(^{151}\) 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 (Asociacion de Política Criminal 1991b).

The other relevant human rights group was the Chilean Commission of Human Rights, which 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” (Castillo Velasco 1993:xiii). The Association and the CHCHR worked together during 1992 and put forward similar ideas to those of Portales group.\(^{152}\) These proposals were in turn fully endorsed by right-wing think tanks, the other new agents in the field. These think tanks were not now 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), which we saw were present in the police and criminal courts arenas, also became core players regarding prison policy. At FPC, Francisco Folch (the under-secretary of Justice in 1980 and the writer of the report that embraced new prisons, rehabilitation through labor, and community sanctions back in the 1990s) continued promoting reintegration and limited spending. He innovated by embracing the privatization of prisons or services (Folch 1993). LyD and UDI, the party formed by Gremialistas after the transition and led by Joaquin Lavin, also favored privatizing prisons (Lavín 1987:145). These groups allied themselves with ODEPLAN expert Ernesto Fontaine, who migrated to Universidad Católica Economics Department.\(^{153}\) By the end of the first administration, the basic belief in a correctionalist

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\(^{151}\) In 1992, the group produced a string of studies on juvenile justice (Riego 1993), community sanctions (Horvitz 1993) prison policies (Vargas 1992), crimes against property (Riego 1993a), and general criminality problems (Mera Figueroa 1993a), deploying international human rights and critical criminology arguments.

\(^{152}\) 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 (Dominguez Vial 1993; Riego 1993). They recognized nonetheless that the prison was to continue existing and that authorities had to improve its conditions in order to protect the dignity of its inmates, and to follow basic human rights standards (Dominguez Vial 1993; Vargas 1992).

\(^{153}\) Fundación Paz Ciudadana, Libertad y Desarrollo and Ernesto Fontaine, the specialist in cost-benefit analysis expertise, supported rehabilitation because of its economic benefits, proposing labor-training

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prison combined with community sanctions remained central to the symbolic order of the field. These old ideas were combined, as was the case in Argentina, with the concerns for ensuring the protection of inmates’ rights and dignity. Radical criminologists agreed with radical libertarian groups that prison populations needed to be reduced—the radicals saw this as necessary for reducing the pains of imprisonment, while the libertarians saw this as necessary to reduce painful costs. This consensus was also shared by the legislature (Comisión Especial Investigadora 1992).

The mix of a rehabilitative prison and alternative sanctions was also fully endorsed by criminologists and correctionalist professionals in the prison administration, in the government offices, and in the universities. The second director of Gendarmería, Isidro Solis (1991-1993), gave ample room to correctionalist professionals within the prison. He created a “Criminological Research Unit” staffed with sociologists, social workers, psychologists, occupational therapists, and criminologists, and he relaunched the Revista Chilena de Ciencia Penitenciaria y de Derecho Penal. In this setting, prison criminologists and sociologists, many of whom had remained in the administration since the early 1980s, kept studying the new criminality of the late 1980s and early 1990s, further refining their treatment interventions. The correctionalist experts and prison directors agreed with human rights groups and criminologists in academia on the need to expand alternative sanctions in the community, and in general they agreed on the need to build new prisons and expand treatment within them.

programs that imitated conditions and jobs outside prison, prison building, and, alternative sanctions as the most convenient policies. Fontaine, in a study produced at the Inter-American Course of Project Preparation and Development (CIAPEP) at the Catholic University, would suggest changing prison regimes, architecture and segregation to provide an environment that would provide inmates with working, entrepreneurial and consumption habits similar to those of individuals outside prison. (CIAPEP 1993)

154 The studied now violent offenders (Gysling Riu and Saavedra Aguilar 1993), sex offenders (Saldivia 1992), juveniles, or native Americans (Cooper Mayr 1992) and proposed new treatments (Cerfogli, Szmulewics, and Santelices 1993).

155 Even if the Diego Portales group, with Vargas, Riego, Jimenez and Bustos, questioned mandatory treatment practices on the grounds of individual autonomy (Jimenez 1993; Vargas 1992). Some correctionalist specialists collaborated with the Association and the Commission directors of the Rehabilitation Departments (Dominguez Vial 1993) and of the Community Sanctions Department (Hofer 1993).
Figure 4-8 Chilean carceral Chile, circa 1994

Juridical Field.  Bureaucratic field  Political Field

+ authority -

Appellate Courts (Santiago)

Diego Portales Law School

Universidad de Chile Law School

CHCHR

Penitentiary Service
Director (Lawyer)
- Security
- Treatment Professionals
  Administrative officers

Executive Branch
Concertación

Justice Ministry

Legislature

MIDEPLAN

FPC

LyD

Academic Field

Journalistic field

penological orientations  security and order concerns

Bold: new agents

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Incarceration was to be left to difficult cases and community sanctions were to be expanded. In 1992 and 1993, more prisons were built to reduce overcrowding and to make rehabilitation possible. Custody and treatment staff was increased—more guards than treatment personnel were hired, even if a new “reintegration program” centered on education, labor training and self-responsibility was put into place. Parole officers doubled from 58 to 120, monitoring 1,500 parolees in 1989 and 2,500 by late 1993 (Ministerio de Justicia de Chile 1993:77–87).

4.3.3.2. Modernized punitivism displaces correctionalism

During Frei’s second administration (1994-2000), political interests progressively eroded the correctionalist program. The central government and the ministers projected their biases onto the field, privileging political-electoral interests, and taking a more punitive stance. The crucial factor of this shift was the change in the orientation of the Justice Minister from administratively centered to electorally centered. The electoral game began to weigh more heavily within the structurally ambivalent position of the justice minister. With the consolidation of the democratic game political appointees became more concerned with their own political careers. In the trade-off “between administrative rationality and political advantage,” (Garland 2001) the next justice minister, Soledad Alvear (1994-1999), followed the second in the name of the first. As we saw in the last chapter, she pushed forward criminal procedure reform so that El Mercurio media group provided her with a positive portrayal in the media, a critical asset for competing as a presidential candidate in 2000 (Ramos and Guzman de Luigi 2000:77). The “grand modernization of justice” became increasingly the most important prison policy: 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. Moreover, it was argued, it would permit greater diversion to community sanctions, thereby helping protect inmates’ rights. It was the panacea. The then-Director of the Treatment Department of Gendarmeria, Francisco Prado, very candidly recognized that in the mid-1990s, we believed that the criminal procedure reform would reduce the number of inmates, that it would bring the population down, that prosecutors would act rationally and that they would ask for alternative sanctions, we believed in it, everybody believed that. (Interview August 2009)

The passage of the criminal procedure reform took six years (1994-2000). In the meantime, minister Alvear began redefining criminal procedural reform as a crime prevention policy, subordinating the prison administration to the needs of the grand reform. The criminal procedure program implied four core policies to follow in the prison

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156 The Justice Minister occupies always “a contradictory position between the administrative and political domain…they..trade off administrative rationality and political advantage…..they need to look both ways..to be an effective administrator but also a popular politician.” (Garland 2001:112)

157 In 1997, minister Alvear would argue that “getting a more efficient criminal procedure, would warrant an adequate response to the victims of criminal behaviors, as well as securing the rights of those on trial.” (Ministerio de Justicia 1997:3).
administration: (i) the development of new treatment programs—for the expected greater proportion of convicts; (ii) the development of new programs for community sanctions—as the reform would allow for greater diversion, (iii) the increase of Gendarmeria’s capacity to transport prisoners on remand to trial hearings without allowing for escapes, and (iv) the increase of housing capacity, including the reinforcement of custody and security. The last program, custody and security gradually overshadowed all others programs.

Between 1994 and 2000, the government built more prisons and hired more guards\(^\text{158}\) while expanding treatment models in line with the economistic view of the experts in FPC. 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.\(^\text{159}\) This program was backed by the Director of the Treatment Department—who followed the example of US Federal Bureau of Prison, as well as 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 1994). The program was couched in a theory of rational action, where work would have moralizing effects, even creating “micro-entrepreneurs” while reducing the costs of internment.\(^\text{160}\) It also gave a central role to “civil society,” or all-too willing private contractors of cheap labor. The program was finally launched in 1998 in the most modern prison, Colina I (Cerda and Leibovitz 2001).\(^\text{161}\)

The Community Sanctions Department (Departamento del Medio Libre) also adopted new treatment programs based on the acquisition of “human capital” through education, training, job-search assistance, and help starting a business. The Catholic University Evaluation Planning Center (CIAPEP) “demonstrated” that, cost-wise, it was convenient to invest in community sanctions (Ministerio de Justicia 1997). Sociologists and psychologists in the Community Sanctions Department developed a unified model of intervention that focused on the acquisition of a series of new behaviors where “the intervention is not based on a model of [social] deficits, but on one where the [social adaptation] problems are parts of reaction and response habits that are difficult to break, given the cycle of self-reinforcement” (Mendoza 2001:13). Combining the “social

\(^{158}\) The government built 126,888 square meters of prison space, almost the same amount of square meters built by Pinochet in 17 years. Guards increased from 6,585 to 8,744.

\(^{159}\) Convicts with long and medium-length sentences received more, education and psychological assistance in the beginning and more work-training as their release date approached.

\(^{160}\) The focus on training for the highly deregulated real work labor market was based on a vision of delinquents as free rational actors who weigh the costs of imprisonment to decide to obtain incomes (rewards) in the legal or the illegal economy, economists proposed investing in segregation, psychological assistance and labor training (Fontaine 1994). Advancing an “economic theory of reoffence” Fontaine distinguished between repentant, persuaded and converted inmates. For repentant inmates he suggested segregation to avoid the contagion of criminal skills. For the “persuaded” psychological and social-work assistance” to make them value licit gains and reject the “cost of being in prison,” and for the “converted”—“those who decide not to reoffend because of the increase in their human capital through participating in rehabilitation programs,” the cure was more education and labor training (Fontaine 1994: 77-82).

\(^{161}\) In 1996 Fundación Paz Ciudadana, headed by Folch and the young economist Valdivieso insisted again in the need of training in conditions that appear as real as possible as in the real labor market, and turning the prison into a “productive prison” (Folch and Valdivieso 1996:11)
constructivism, strategic psychological therapy and general systems theory,” the “social reintegration approach” was replaced by a “normative reintegration approach,” where “convicts validates the existing normative order in society and solves the conflicts that affect him through behavior that do not imply transgressing that order” (Hofer 2000:159). In the new perspective, the “social” is reduced to a normative dimension to which the convict must adapt by developing adequate habits that allow him to exploit his capabilities in the community, i.e. the market.

However, these labor-training programs within and outside prison did not prosper; as the prison population increased, rehabilitation concerns were again put aside. The dominance of the executive branch and its orientation toward political concerns became more intense as the 2000 presidential elections approached and prisons became “problematic.” Prison programs became subordinated to electoral demands, including the avoidance of “scandals” (such as escapes or riots), as well as to the adaptation of the prison to changes in criminal procedure. Francisco Prado, the Director of the Rehabilitation Department between 1993 and 2003, observed from the inside that

“Soledad Alvear did not want to have any problems, she wanted to be president and preventing escapes became central” “original plans of incorporating guards to treatment, where guards would treat inmates with respect, and collaborate with technicians, were interrupted, the guards opposed it and the directors finally turned in, and let guards concentrate in custody” (Interview Francisco Prado, August 2009).

Directors devoted their energies to producing secure prisons and adapting the services to the demands of the judicial reform (Cámara de Diputados de Chile 2007:20–24). Their concern for securing prison order was justified, as common prisoners, in the late 1990s, began to adopt a more combative attitude towards guard abuses. The distribution of political detainees across many prisons diffused the legal know-how for opposing prison authorities. By the late 1990s, the correctionalist experts within prisons, while enthusiastically developing new treatment programs, lost their voice within the carceral field. Instead, they became subject to the demands of political agents. While the prison and think tank experts promoted rehabilitation and treatment, political agents, the government, and

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162 The program had limited material impact—in 2000 it involved only 3% of inmates (Fundación Paz Ciudadana 2000:5). The community sanctions programs did not develop much either. Between 1997 and 2001, “the five year penitentiary plan” only increased Reinsertion Centers from 24 to 31, and parole officers and correctionalist professionals rose from 147 to 198. Politically, investing in the system was not a priority. Still, despite their marginality, reproducing the bureaucratic habit of continuing to work with extremely limited resources, the “pioneers of the 1980s” appear in 2001 with “much optimism and with great expectations for the criminal procedure reform” (Hofer 2003:165).

According to the then director of the community sanction department since its creation: “[the system] does not presents “crisis,” or if there are crisis those crises are not public, because if a parole officer has 120 when in reality he has to attend 30 nobody care, in practices there are no murders or escapes, unless a parolee commits a serious crime we have no and we remained marginal, not that relevant within the organization” (Interview Maria Eugenia Hofer, July 2009)

163 The writs of habeas corpus against abuses went from 2 in 1992 to 21 in 1998 (Informe de Derechos Humanos 2007: 23)
legislature passed laws that increased the number of detainees. The prison population grew 50% between 1994 and 2000, from 20,954 to 30,051, while the number of criminal accusations before courts ballooned from 21,966 in 1997 to 31,573 in 2000. This produced a new “prison crisis” that led to an even greater expansion of the prison administration. This expansion heralded the appearance of private agents and human rights experts.

4.3.3.3. Private contractors, human rights and the infernal prisons

Changes in the political sector finally allowed private capitalists to fully enter into the carceral field to deal with the “demands” of the expanded criminal courts. The “new criminal procedure” and new managerial expertise legitimated the expansion of the prison population just as prison conditions dramatically deteriorated. As prison conditions become a publicly recognized scandal, the government responded by adding more prisons and more prisoners. With the election of Ricardo Lagos as president in 1999, the highly pragmatic Party for Democracy (Partido por la Democracia) took control of the administration, reduced the power of the Justice ministry, and imposed his own way of doing things centered on prison building. The executive branch’s enhanced influence would also enhance the influence of Lagos’ pragmatist style and of the FPC. Lagos had renounced his activist lineage and 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. He promised to “sign everything Paz Ciudadana proposed” (Ramos and Guzman de Luigi 2000:92).

By the early 2000s, the replacement of Prison Directors, the changes in the Ministry—now in the hands of the more pragmatic and liberal Gomez, the arrival of President Lagos, and the politicization and overpopulation of prisons allowed the central government to impose the market-friendly policies of prison privatization. The new criminal procedure, which began to be implemented in 2000, increased incarceration (rather than reducing it, as promoters had speculated). The criminal procedure reform meant the installation of a massive criminal justice administration, which grew from 80 criminal courts to 396, with 423 controlling judges and 642 new prosecutors (Gomez 2001:11). The promoters of the reform promised to reduce prison populations by reducing the number of prisoners on remand, with the understanding that the total number of detainees would remain stable, as well as the conviction rate and the standards for early release. All these dimensions changed beginning in the 1990s. By 2000, President Lagos selectively followed only a portion of Fundación Paz Ciudadana

164 Law 19,053 of 1997 allowed judges to order pretrial detention “in case of danger to society” and law 19,661 of 2000 for cases of “gang crimes”, as well as the increase in minimums for robbery and drug-trafficking and possession (Salinero Echeverri 2009:140).

165 Detainees for crimes against property tripled from 30,000 to 90,000 between 1997 and 2001. The new investigative and sentencing infrastructure increased the production of convictions, most of which through plea-bargains for up to two years of prison (“simplified procedure”) or up to five years of prison (“abbreviated procedure”). Minimum prison terms for drug and domestic violence crimes were elevated. Finally the granting of early release benefits by judges diminished, from benefiting 12% of the population in 2000 to only 9% in 2001 (Salinero Echeverri 2012).
In the early 2000s, FPC proposed once again to expand the involvement of private companies in prison management, labor training, and community sanctions. The privatizing orientation of FPC converged with Lagos’ focus on infrastructure. President Lagos had given concession on building and maintaining freeways during the 1990s (Zrari 2008), and politically capitalized on his image as a “doer.” By giving prisons to private contractors, he also appropriated the right-wing candidate’s programs of privatizing prisons. 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.

The prison crisis 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 crisis also allowed high officers and state managers to replace correctionalist expertise with managerial skills. 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).

The government opted for going “the French way,” retaining security and supervision of prisons and contracting out building and operations, as well as provision of food, laundry, medical and rehabilitation “services.” In the “Chilean mode with a brave design regarding the quantity of services given to private contractors” (Arellano Quintana 2003:18) private contractors administered prisons, and provided educational and rehabilitation services. Adopting the “Chilean model” the central government opened a “new investment hub for private companies” where rehabilitation was oriented towards labor programs, and inmates were hired by private companies and provided psychological assistance and evaluation. Prison officers preserved part of their power. In particular, officers retained control of security, while upper-echelon officers and high-level

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166 During the late 1990s two camps confronted each other within the foundation, those who “defended the effects of ciphers (that allowed the foundation to position itself in the public arena) and those emphasized research and the elaboration of public policies” (Guzman 2000: 92). The later prevailed, proposing more security in prisons hiring more officers (Fundación Paz Ciudadana 2001:´13) but also greater diversion to community sanctions (Fundación Paz Ciudadana 2000). From among these two options Lagos favor privatizing prisons.

167 At least since 1987 Joaquin Lavin and then the think-tank Libertad y Desarrollo had been advocating for private prisons. Since the mid-1990s Fundación Paz Ciudadana will also sponsor privatization of prisons.

168 In the mid-1990, Minister Alvear appeared open to study privatization (Alvear 1994:14), but the Prison Director considered it against the “culture of the public administration of being in charge of prisons” (Martinez 1994:54) and the rehabilitation professionals questioned the idea, of “making private profit from incarceration” (Prado 1995).

169 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.

170 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 (Prado 1995: 80-81). Similar conditions operated in the Chilean case but with the difference that within the “brave Chilean model” (Bates 2003) private contractors take everything except custody.

171 Between 2002 and 2006 the government built 333,331 square meters (Cámara de Diputados de Chile 2007:40), more than it has built since 1980, and increased personnel from 9,235 to 12,115 (Cámaras de Diputados de Chile 2007:42)
bureaucrats become “managers” of the prison service. The process of privatization benefitted both prison officers and correctionalist professionals, none of whom objected to the process.\footnote{172} The privatization of prisons meant the opportunity for a younger generation of officers to “professionalize” themselves, both in project evaluation and in new public management expertise.\footnote{173} Higher-level officers—competing for higher commanding positions—received costly training in public management and concessions.

\footnote{172} The government controlled the prison officer’s unions and promised new and better working conditions and the reduction of violence, given the technological improvement of the new prisons. In 2000 ANFUP backed privatization, as “it would better order the house, with workers who were cooking or being chauffeurs will now specialize in custody” (Aranda, Paola Diaz, and Monge 2001) The chronically dominated correctionalist specialists would supervise the private provision of services, including rehabilitation (Winka Letellier, Interview July 2009)

\footnote{173} The directors of those modern private prisons have steeped themselves in public management expertise. In 2009 director Jimenez Mardones, between 2007 and 2010 is a lawyer specialist in “Social Management and Public Policies” and “Criminal Procedure Reform” (Ramirez Barrera 2009:245).
**Figure 4-9 Chilean carceral field, circa 2005**

Juridical Field.

Bureaucratic field

Political Field

Executive Branch
Concertación

Legislature

Justice Ministry

Penitentiary Service

Director
(Lawyer-manager)

-FPC

MIDEPLAN

Private Companies
Sodexo

Appellate Courts
(Santiago)

Warranty Courts

Diego Portales Law School

Penitentiary Service

Director
(Lawyer-manager)

-Security

-Treatment

Academic Field

Journalistic Field

penological standards

security and order concerns

**Bold:** new agents
The chronic subordination of the field to political interests, even if garbed in a managerial discourse shared by politically appointed prison directors and private contractors, eroded the concern for rehabilitation among prison managers and within prison policies. The agents who “commercialized” prisons have introduced the language of “service” and changed the standards for operations. The measureable outcomes became not rehabilitation or even reinsertion, but prevention of escapes. Prison managers and the directors in the prison became committed to provide modern facilities to “promote rehabilitation.” Authorities and prison managers report on rehabilitation programs and routines, but are concerned with “processes” rather than outcomes. In the private prisons, authorities ensure that private contractors provide a given number of hours of treatment, training, food, and medical services, unconcerned with the actual effects or utility of the interventions. According to Minister Bates, the new prisons must “at least not affect dramatically the possibilities of social reinsertion” (Bates 2003). Then Gendarmeria Director Juan Carlo Perez argued that imprisonment should be seen as “an opportunity for change, and not just a form of punishment...contributing to social reinsertion, thus diminishing reoffending and increasing public security” (Perez 2003:34).

By the mid-2000s, political agents converted rehabilitation into a means for increasing public security. Between 2000 and 2007, the prison population rose from 33,600 to 43,600. The “efficient and transparent” criminal justice system, with its young and productive judges and prosecutors, kept increasing the prison population, reaching a proportion of around 77% of convicts, almost reaching “European standards, leaving behind Latin American standards,” as one expert on prison problems noted in an interview. The only problem now was that this growth in the prison population led to a daily reality of prisons that remained very Latin American. Overcrowding and violence continued in the 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” privatized and public prisons, the latest government strategy has been to manage stubborn accusations of human rights activists, who had found fertile soil to advance their message. However, just as with rehabilitation, political interests and the political logic also eroded the concern for dignity. I close the analysis of prison reform by analyzing the politics of denial of Concertación in the face of accusations that it the human rights of inmates were systematically violated in prisons

4.3.3.4 The politics of denial

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,

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174 At the end of the day, in the words of the Under-secretary of Justice, the “prison administration must warrant: that the punitive capacity of the state becomes evident, that the system works efficaciously, that sanctions ordered by courts are served; which implies absence of escapes and events that alter the normal functioning of the regime, and that legal and constitutional norms are respected, in particular human rights” (Arellano Quintana 2003:16).
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 was prisons. The Human Rights Center at Portales agglutinated 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 political and administrative elites in charge of the prison administration. Following a managerial approach, top-down prison bureaucracies tried to reduce the problems of violence, killings, and overcrowding to a problem of public relations and public image. For five years, between 2002 and 2007, the Justice Ministry systematically denied the validity of the reports describing the terrible prison conditions (Instituto de Derechos Humanos 2005, 2007). At the same time, they hired their own teams of local and foreign legal experts to show they “were working” on the problem. 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 (Rapporteur on the rights of persons deprived of liberty 2008) did the Prison Service Directorate recognize that prison conditions were sub-standard and that they violated human rights.

In the face of these negative reports and scandals, and in particular after ten inmates died in a fire in an overcrowded juvenile detention facility, the central government finally decided 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.” In early 2010, 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 conditions of the facilities.

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175 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 (Castro and Besio Hernandez 2005).

176 The Ministry hired its own human rights specialists and sociolegal scholars from Germany with the assistance of Deutsche Gesellschaft fur Technische Zusammenarbeit (GTZ), with the explicit aim of assisting the Ministry of Justice in regulating judicial oversights of prisons (Feest 2003). After two 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 judge.

177 Old-time Diego Portales professor Felipe Gonzales was a member of the commission and since 1996 the Inter-American Commission of Human Rights created a Rapporteur on the Rights of Persons Deprived of Freedom.

178 In 2008, the General Comptroller also issued a report criticizing the lack of correct management of the concessions, and the Supreme Courts Prosecutor issued another one also denouncing the terrible conditions of prisons (Instituto de Derechos Humanos 2009:100–110).

179 The Council was formed only by “specialists” from think-tanks and NGOs: Fundación Paz Ciudadana, Center for the Study of Security—led by Hugo Fruhling; the FLACSO program of Citizens Security—led by Lucia Damnnert, and by Christian Riego, from the Justice Studies Center of the Americas, CEJA. The think-tanks and university expert were joined by the Supreme Courts Prosecutor, and representatives of the Ministers of Justice and Interior. The minister asked them to work on rehabilitation.
system, and lack of judicial control (Consejo para la Reforma Penitenciaria 2010). By the
time the report was ready, President Bachelet’s term was finishing and the suggestions
were to be applied by the subsequent administration. 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 and the
private ones not far behind.  

If in Argentina the human rights groups focused on the prison in the early 1990s
to deal with massive riots and protests, atomizing them into individual legal demands and
creating for themselves a position, that of the Prison Ombudsman, in Chile human rights
activists could not advance beyond denouncing prison violence and abuses. Here, it was
not the volatility of the political system that prevented rehabilitation and the
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. 

4.4. Lessons and implications of carceral convergence

The contemporary carceral systems of Argentina and Chile are not simply
continuous with weakly bureaucratized penal states that remained unchanged “throughout
the twentieth century” (Muller 2011b). The prison goals and regimes underwent
important changes in Argentina since the 1960, from rehablitaion to counterinsurgency
goals and order in the 1970s, and back to rehabilitation in 1980s and 1990s. Even if the
distance between the prison philosophy and the prison regime in democratic Argentina
was incomparably greater to the one that existed in the late 1960s, the return of the
rehabilitation facilitated and even justified the building of new prisons during the 1990s.
Moreover, while both cases end up following a “particularly punitive model” that
accompanied economic globalization and the turn to neoconservatism in Latin America
(Iturralde 2010), such punitivism is very different in each and case and follows very
different paths. In Argentina, even if the economy began to open in the 1970s, and was
fully opened in the 1990s, imprisonment remained low, and political agents adopted
decarcerating policies between 1983 and 2000. The renewed consensus toward
decarceration and rehabilitation after dictatorship and the interests of the executive
branch to reduce conflicts within prisons converged to foster policies that reduced the use

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180 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 began 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.

181 On December 8th 2010, 81 inmates died in a fire at the San Miguel Penitentiary Complex. The complex,
designed to house 1,100 was housing 1,964 at the time, and only 30 guards controlled them. The guards, of
course, were rapidly accused by the efficient courts system.
of imprisonment. In Chile, the continuity of the discourse of rehabilitation during dictatorship, the reduced use of the prison in political repression, which produced in turn low levels of politicization after the return of democracy and until the late 1990s, all facilitated first, the positive reception of the criminal reform projects that would reduce the use the proportion of pretrial detainees and allow for treatment within prison. Second, after the new criminal procedure flooded the prisons once more it made acceptable the massive investments in prison building that paralleled the implementation of the criminal procedure reform.

In both cases, the role that prisons had in political repression during dictatorship was critical to understand the timing of the turn toward hyper-punitivism in the last decade. 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. In the prison arena this produced a highly illegitimate prison after transition, which explains in part the orientation of democratic authorities toward trying to reduce its use as well as the enormous turmoil (Irwin 1980) experienced within prisons in the 1980s and 1990s. 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 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 a result prisons were quiet, and authorities concentrated themselves in building new prisons to finally make possible the rehabilitation programs in democratic times.

Finally, the turn toward neoliberalism, exclusion and social anxiety and even crime rise do not explain the rhythm of increase in imprisonment. The carceral field mediated the demands toward greater punishment, refracting through their different institutional evolutions, the paths of penalization. In Chile, the increase in imprisonment follow mostly organizational changes, first the expansion of courts in the late 1980s and then the increase in policing budgets in the late 1990s, and finally the quadrupling of sentencing judges in the early 2000s and the adoption of productivity standards within courts. In the Federal justice of Argentina, the changes in the criminal procedure had no strong impact on incarceration in the mid-1990s, while the increasing in judicial punitiveness in the late 1990s, later on the increase in the severity of legal sanctions since the turn to populist punitiveness in the early 2000s, explain the increase in incarceration rates in the last decade.

Having reconstructed the three independent processes of structurally conditioned struggles that account for the separate evolution of police, courts, and prisons in the subsectors of the state after the transition to democracy, I now turn to describing how the penal fields were reassembled under democracy. I analyze the effects of the struggles over the overall architecture, the symbolic regimes, and the operation, and deployment of these new penal powers in the democratic and neoliberal societies of Argentina and Chile.
Chapter 5
Re-configurations of penalty: judicialization and technocratic punitivism in Chile and structural fracture and populist punitivism in Argentina

[Synopsis chapter five]

[In this chapter I observe the structural, symbolic, political and material effects of the relatively independent processes of organizational change in each the bureaucracies of the policing, criminal courts and carceral fields I analyzed in the previous chapters to (i) map out the repositioning of the core penal bureaucracies in relation to each other in the penal sector of the state after the fights around reforms; (ii) describe the general symbolic orders of each penal field; (iii) account for the resulting modality of penal policy-making (expert-based and technocratic or populist and controlled by the political agents) and (iv) trace its punitive effects in terms of policing, sentencing and imprisonment.

At the objective structural level, the new police, courts and prison bureaucracies have different relations among them. Two decades after the formal return to democracy circa 2010, in Chile the judiciary—with renewed courts and a dominant prosecutor’s office—acquired greater power and authority in relation to the police and the prisons compared to what they had before dictatorship and after he beginning of the democratic era. In Argentina, by contrast, each bureaucracy increased its resources and personnel in absolute terms, but the overall distribution of personnel and budget among the police, courts and prisons bodies remains very similar to what it was before the struggles over reform began in the mid-1980s. After two decades of intense contestation to transform the police, courts and prisons, the judicial bureaucracy has not become as powerful as its counterpart is in Chile in relation to the police and prisons. There, police and prison organizations retain great independence from the still weak judiciary.

At the symbolic level, the new discourses and rationalities that replaced the counterinsurgency doctrines which informed penal functioning during dictatorship also differ in the criminal justice systems of today—even if both have been exposed to the same rationalities advanced by the new experts. The symbolic orders of the penal field differ in contents and in cross-organizational coherence and convergence. In Chile, a homogenous orthodoxy centered around legality and managerial rationalizations holds sway. This new orthodoxy has been incorporated in the official mission definition and rationalization of official practices in policing, criminal investigation and sentencing, and prison management. In Argentina, the rationalizations deployed to guide penal practices are more fractured across the space of penal bureaucracies, with multiple centers of (contested) orthodoxies organized within each bureaucracy.

In each criminal justice system, policy-making modalities also differ, reflecting distinct balances of power between new experts, top police and courts bureaucrats and political agents. In Chile, after the struggles over reform were settled in the late 1990s, each of these groups of agents ended up with an equal share of authority over penal policies, leading to a what I call a “technocratic” penal policy making. The technocratic modality—that is, shaped and built by commissions of experts with high academic credentials and previous experience in the policy and political agents—provides new and general rationalizations of penal authority that legitimate massive urban policing, highly punitive courts and expanded prison populations. In Argentina, the limited success of the new experts in incorporating their models and programs in the administration and their total dependency on the volatile political parties and central government has not allowed them to convert their original expertise in a
general authority over penal affairs, as occurred in Chile. In this fractured arena, the new experts and bureaucratic elites were displaced by agents in the political pole of the penal field in penal policy making, who instead engaged in a populist punitivist modality, where they base their policies in their role of political representatives and not as experts.]

5.1. Introduction

In this chapter I trace the ripple the effects of the struggles over penal authority within the police, courts and carceral fields at a higher level, that of the penal field. The chapter’s goals are: (1) to reconstruct the structure of relations among police, courts and prisons that resulted from the changes in each sector; (2) to show the resulting modalities of penal policy making—technocratic or populist; and (3) to account for the ways penal public powers were deployed in each country. During the authoritarian years, as seen in the preceding chapters, the penal sectors of the state in both countries were militarized in discourse and in practice, were controlled by military expertise and allied experts, were oriented toward counterinsurgency and political order, and acted despotically without judicial guaranties. After the return to democracy, however, the penal sectors of the state in Chile and Argentina evolved very differently. The struggles around reform that took place after transition changed not only the core mission and modalities of operation of those bureaucracies, but also the relations among them. These struggles led also to the formation of new symbolic and discursive constellations. These new symbolic orders present different degrees of homogeneity across the different subsectors of the penal fields. In Chile, a shared orthodoxy about the use of police, court and prison powers has emerged among all agents involved. In Argentina, an atomized orthodoxy centered around each bureaucratic subsector resulted. The different outcomes of the struggles for reform also determined the greater power of the original experts involved in each subfield—human-rights scholars in the policing field, criminal procedure and management experts in the criminal courts field courts, old penologists and economists regarding prisons, etc. This process shaped the experts’ chances to become recognized authorities in more general penal policy-making after their involvement in reform. Finally, as a result of this new architecture and the new symbolic regimes, the penal sectors of each state produced very different material and symbolic effects.

5.1.1. Structural changes in Chile: the rise of the judiciary and the judicialization of police and prisons

The transition to democracy removed the military from government and forced its retreat to its traditional defense function. At the same time, the military stopped participating in internal order production. While civilian authorities slightly diminished the resources available to the military, they progressively provided more resources to penal bureaucracies. After the retreat of the military, and the struggles to redefine the missions and operations of the different penal bureaucracies, the criminal-justice system in Chile expanded in absolute and relative size within the bureaucratic field (see figure 5.1) The criminal-justice arena moderately increased its share of state resources. While in 1987 internal order maintenance captured 3.36% of the state budget, in 2000 it drew
4.9%, to stabilize at 3.9% in 2010. During the same period, the weight of the military dropped from 12.6% of the national budget in 1987 to 5.6% in 2010. But due to the the different configurations and intensity of internal struggles, each penal bureaucracy experienced different levels of growth. Whereas the police increased its relative participation in the national budget by 22%, the criminal courts, prosecutors and public defense doubled their share while the budget of prisons rose by 200% in the long run. While all organizations increased their budget share in the first four years after transition, the police and the prisons retained that level of participation over the ensuing decade while the criminal courts continued increasing their share after 1994.

**Figure 5-1 Budget allocation for defense and criminal justice (1987-2006)**

The expansion of judicial power after the successful reform of courts produced a *structural tilting of the penal field toward judicial power*. The new balance of power between police and courts has also impacted the police subfield, both in terms of the power of the different police agencies and by causing a reorientation of practices toward criminal investigation instead of mere urban order maintenance and crime prevention. We can observe those differences in terms of the growth of each organization in terms of budget and personnel (see Figure 5.2 and Table 5.1).

The transformation in budgets correlates with the distribution in personnel, with a new division of labor in the maintenance of order. In 1990, police personnel comprised 84.1% of agents of order. In 2010 it accounted for only 72.7% of them, whereas prosecuting, sentencing and custody personnel went from 15.5% to 27.3%. Within this space, judicial authorities grew the most, from 1,800 judges and clerks involved in punishing crime in 1990—including ad-honorem public defenders—to almost 7,000 in 2010. The relative growth of the judiciary includes a new division of labor: of the almost 7,000, 3,728 work for the prosecutors’ office (see Table 5.1).
Table 5.1 Change in proportion of criminal justice personnel (1967-2010)

<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td>Carab.</td>
<td>23953</td>
<td>33546</td>
<td>33174</td>
<td>37848</td>
<td>41117</td>
<td>48119</td>
</tr>
<tr>
<td>Invest. Pol.</td>
<td>2658</td>
<td>3000</td>
<td>4900</td>
<td>6600</td>
<td>7200</td>
<td>10196</td>
</tr>
<tr>
<td>Courts</td>
<td>750</td>
<td>1067</td>
<td>1711</td>
<td>2622</td>
<td>1939</td>
<td>2585</td>
</tr>
<tr>
<td>Prosecutor</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>888</td>
<td>3383</td>
<td>3728</td>
</tr>
<tr>
<td>Pub. Deff.</td>
<td>0</td>
<td>0</td>
<td>263</td>
<td>174</td>
<td>464</td>
<td>613</td>
</tr>
<tr>
<td>Prison Adm.</td>
<td>3437</td>
<td>4673</td>
<td>5011</td>
<td>8744</td>
<td>10537</td>
<td>14297</td>
</tr>
<tr>
<td>Total</td>
<td>30789</td>
<td>42456</td>
<td>45249</td>
<td>57519</td>
<td>66090</td>
<td>82889</td>
</tr>
</tbody>
</table>

Sources: Urzua (1971), Scheetz and Instituto Nacional de Estadísticas

Comparing two moments—(1) in the 1980s before the transition to democracy and (2) in 2005 after the democratic era reforms—we observe a mutation from a space dominated by coercive bureaucracies maintaining order with judicial agencies in a subordinate position, to a new structural relation where judicial authorities grew and became internally specialized and more powerful (see figure 5.2). There is also a demilitarization of the bureaucratic field. This “judicialization” of the field results both from increased resources for the judicial sectors and from the institutional changes within courts administration. Today, a proactive and centralized prosecutorial administration created in 2000 dominates the expanded judicial sector. The prosecutors’ offices have more resources, and they now both control investigations and dominate sentencing through plea-bargaining, as we will see later.

The structural change within the judiciary was accompanied by a parallel transformation in the policing arena, as police bureaucracies assigned to investigating crime grew more than those in charge of prevention. The balance of power between the Carabineros and the Investigative Police has been modified. While the ratio between preventive and investigative police was 6.5 to 1 in 1995, after the criminal procedure reform of 2000 it had dropped to 6:1, and it kept diminishing to 5:1 in 2005 and 4:1 in 2010. Even purely preventive police, dominated by Carabineros, has become more involved in criminal investigation subject to the direction of prosecutors. The Carabineros now devote more staff and bureaucratic resources to investigations. The growth of the judiciary has also propelled the growth in prison personnel and budgets to supervise the growing numbers of condemned to custodial sanctions, but also to provide security in hearings and for transporting defendants to hearings, as we saw in the last chapter. These changes in the new architecture of the penal field have been accompanied by changes in the doxa of the penal field.

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1 In 2004, from the 41,117 Carabineros, 20,000 received special training to provide services to the new judicial authorities (Carabineros 2005:118), and since 2002 Criminal Investigations Service Units (SIP) were created within each police precinct, creating a Criminal Procedure Reform Department, which late on became the Order and Security Directorate # 9 (OS9)
5.1.2. The new symbolic space: from political to penal-managerial order maintenance

The changed structure of relations between order-maintenance organizations, with the relative increase of power of court and prosecutors, was accompanied by a change in the symbolic order in the core bureaucracies comprising the penal field (police, courts and prisons). This penal field, as any other field, is also a space of cognition, a “symbolic and cognitive construct” (Gorski 2013:335). It can therefore be analyzed, following Gorski (2013:335), in the transformations of the “discourse of ultimate values,” its forms and their degree of rationalization. Regarding “forms,” Gorski, following Weber and Bourdieu, distinguishes between “sociodies” (“explicit theories about the social order and human condition”), and “mythologies” (“popular narratives to inspire the defense of the value”), which in turn may become more or less rationalized in more or less complex theories or in more or less codified narratives and rituals. As a result of the struggles around reforms, the criminal justice arena’s symbolic regime veered from being defined by the imperative of state security to becoming organized around judicial-managerial standards rationalized around the values of “citizen safety,” formal due-process, and “service provision.” Going from a military doxa to a strong judicial doxa, citizen safety displaced political order and the (weak) penal welfarist visions of the 1960s. The focus veered from the state to the citizens. The new centrality of citizen safety, due process and efficiency is shared by top bureaucrats within policing, courts and the prisons, but also by central government agents and legislators, as we will see later on.

5.1.2.1 The police after reforms: provider of security and investigative services

After democratic transition, and a result of struggles and strategies of agents in the policing field, but also due to developments in the judicial sector of the penal field, the police changed their mission specification, their modalities of deployment, and their official positions on the public and offenders. Police organizations shifted their orientation from state security and political repression to “citizen security”, encompassing crime prevention and investigation (judicialization), managerially rationalized in terms of service provision to individuals, “institutional clients” or communities.

The Carabineros´ elite elaborated their constitutional mandate of “enforcing the law, securing public order and interior [domestic] security” (1980s Constitution, ch. 101), turning it toward common crime and adopting a private business-management logic that redefined routine policing. The Carabineros rationalized deployment according to a focalizing logic constructing policing as service provision to be delivered in an efficient and timely manner to the citizen as customer of the state. It is targeted not only toward crime control, but also toward satisfying the recipients of the service: law-abiding citizens-consumers, and in particular as potential victims of crime. In the new “Strategic Plans” of 2001-2005, the Carabineros elite declared as their aim to “increase institutional efficiency, to augment the opportunity and quality of police services to satisfy the demands of users, and to strengthen relations with the community” (Carabineros 2005:12). This community (society) is now viewed as either a possible ally to be incorporated in “strategic alliances” (2005:87) or as composed of sectors to be targeted through different degrees of intense surveillance. In this new logic of service provision,
the police target “objective insecurity”—measured through police reports and surveys—and “subjective insecurity,” or fear of crime. The managerial language includes a “differentiation of the product by quality,” particularly through the evaluation of responses and the “opportunity of their provision.” (2005:98) The new police discourse also incorporates political accountability, reporting to “authorities and the community,” the criminality of each province and region, and services provided.

Similar changes in discourse took place in the Investigative Police. From a small force oriented to political repression during the dictatorship, it has become explicitly devoted to “crime prevention, fulfillment of judicial orders, cooperation with crime courts, border control, surveillance of foreigners, and representing Chile before INTERPOL” (Herrera and Tudela 2005:169). Police managers now combine the democratic themes of public accountability with market competition. In their “corporate mission,” they announce “a new disposition to be controlled by the executive authority, legislature and the judiciary, and a responsibility before the community,”—with a private-enterprise logic of “quality services” to their “users (citizens, prosecutors, judges and the administrative authority, providing a scientific and technically qualified service, appropriate, to be delivered in time and adequate to the demand, on the basis of improving standards of efficiency and efficacy” (Herrera and Tudela, 2005: 171). The new Investigative Police abandoned its 1960s promise to defeat crime based on scientific capacities alone and also its 1970s crusade spirit to neutralize political dissidents. Since the mid-1990s, it adopted instead an “innovative approach that derived from an ethical and democratic perspective, with direct effects on the functional and organizational realm, where strategic management and the emphasis in transparency, efficiency and quality are the key” (Herrera and Tudela 2005:170–171). The Investigative Police’s objective competition over criminal investigations is dressed in the language of commercial competition, emphasizing the high “degree of confidence” of its “institutional consumers”—administrative and judicial authorities (Herrera and Tudela 2005: 175).

By the 2000s, these two police forces, which for decades maintained a low-grade antagonism toward each other and distinguished themselves according to their occupational specialization, deploy a common language, and their activities and rationales have become almost indistinguishable. Their common focus is no longer political order and serving the executive branch, but serving the national community of citizens and the “institutional consumer”—central among them, the prosecutor’s office.

5.1.2.2. The judiciary and prosecutors: retribution, rational deals, and munificent justice “services”

In the expanded judicial sector of the criminal justice sector, besides juridical discourses, the same discourse of public accountability with managerial standards, and the political language of citizen safety that we find in the police sector is deployed. Today the

2 In 2005, for example, Carabineros reported to have covered 47% of orders to investigate (Carabineros 2005:128), while the director of Investigations Police, Arturo Herrera, highlighted that “even with 15% of the total of police personnel in the country, they covered 53% of the orders” (Herrera and Tudela 2005:168) The market logic includes continuous measurements of ranking among “criminal justice agencies,” and reference to evaluations of constant self-evaluations.
sentencing courts, warrant judges, the prosecutor’s office and public defense administration all deploy a legal discourse detached from “social discourses” and centered on human rights, coupled with a concern for managerially efficient provision of sentencing, defending or prosecuting “services.”

Within this judicial-managerial discourse there are variations in emphasis. Sentencing criminal courts (as opposed to overseeing courts) have returned to upholding retributionist theories of punishment (Duran Migliardi 2009). They combine these with a liberal individualistic discourse that gives ample space to plea bargaining introduced in the criminal procedure reform of 2000 and presents no trace of concerns for “social” needs, or of the medical categories of psychological determinations that had currency before the transition. Legal scholar Duran Migliardi, from Universidad de Chile, concludes in his study of contemporary Chilean judicial jurisprudence that High Crime Courts in the democratic period uphold a vision of punishment that “mechanically follows the dictates of legislation” (Duran Migliardi 2009: 276). Punishment must, at least on paper, follow from the juridical seriousness of the offence. The focus is on acts, not on actors. In this shift to just desert, which abandoned the prospective-rehabilitative ideal, there is a new individualization of sentences through agreements between defendants and prosecutors, which replaces the old individualization based on character. Courts are also oriented to efficiency, viewing plea bargains as a means to “facilitate transparency and speed of process” (Poder Judicial de Chile 2011:28).

Judges in charge of overseeing procedures (jueces de garantías) espouse this preference for formal legality and due process, invoking legal formality when authorizing pre-trial detentions or mandating supervisory measures, and giving ample space for agreements between prosecutors and defendants, which accounted for 97% of sentences leading to sanctions. The public defense corps also shares the discourse of due-process protection. However, this is now combined with the individualistic principle of private negotiation through plea bargain. According to the official philosophy of the Defense Service, the role of public defenders is “to confront the enormous differences that exist between the punitive power of the State and the individual, equilibrating position and forces, and allowing for equality in terms of weapons.” (Public Defense Directors, 2010). As in other sectors, the logic of provision of services is central, with quantification of the “clients” served, assisted and advised all well publicized in annual public accountability reports.

Finally, the prosecutors’ office has not limited itself to performing its official function, but has surrounded prosecution with an aura of political responsibility, legal standards and administrative efficiency. In 2009, in its annual report, the public prosecutors presented the corporate “vision” of the prosecutor’s office. This was to “position itself as an institution of excellence… to articulate the Chilean policy of penal repression, with the special aim of taking care of victims and witnesses, consolidating the rule of law, with high levels of performance” (Ministerio Público de Chile 2009:18–19). Here, managerial logic overlays official function, dressing up penal repression in a language of service. According to the General Prosecutor in his 2010 report, “it was not enough to fulfill our functions; we had to perform our functions under standards and indicators of quality and efficiency, adopting focus and specialization according to demands that crime imposed… [to] take adequate and efficacious measures to protect the rights of victims, respecting the rights of those involved” (Chauan Sarras 2010:17). In the
prosecuting bureaucracy, justice is now not anymore a matter of truth-making through inquisition, as it was before reform, and mostly a matter of agreement-making operating under the dual standards of legality and efficiency. The aggressive search for productivity of the judicial bureaucracies spills over symbolically into prison administration.

5.1.2.3. The custodial (and privatized) prison

The directors and managers in charge of the expanded prisons in Chile define it primarily as a space of confinement legitimized by housing *convicts*—instead of pre-trial detainees—and as a site that “produces” security. The sudden increase in the proportion of convicts, which went from 51% of all prison inmates in 2001 to 76% in 2009, gives a new legitimacy to prison managers. At the same time, under the new discourse of public management, the concern with security—“redefined rehabilitation” (Garland 2001:176) as custody has become a means of security, not rehabilitation. The prison is primarily oriented to serving courts and society, not inmates. The inmate went from being a subject that could be transformed to an object to be housed, transported and neutralized. While in the political realm we go from subject to citizen, in the carceral realm, those captured by the system evolved from citizen to pure subject. According to top prison officials in 2010, the Gendarmería has as its core mission to “[c]ontribute to a safer society, securing the efficient fulfillment of pre-trial detentions and custodial sanctions, providing those involved a respectful treatment in humane conditions, and providing re-insertion programs that tend to diminish re-offending” (Dirección de Presupuesto 2010:1).

Within the managerial imagination, “custody” is disaggregated into “surveillance; attention and assistance services.” Each in turn is disaggregated in “sub-products.” Surveillance, for instance, is subdivided into four sub-products: “fulfillment of custody, physical security of personnel and inmates, transport, and following up on prison benefits.” Each sub-product is given a metric and measured: “Fulfilment of custody” is measured in terms of escapees as a proportion of the population, for example. Security and attention comprise 92% of the budget. The same managerial logic has been used to justify delegation of prisons, or at least of prison services, particularly the provision of food, clothing, laundry, health care, and psychological assistance to private companies. Security and service provision are also the catchwords that have redefined parole, which has turned from an alternative to prison into a means to expand supervision (Gendarmería de Chile 2012:3). In prisons and community sanctions, rehabilitation is not centered around providing aid and helping the inmate by intervening in his social environment, as within the social workers perspective. Instead, it is individualized and subject to a normative rationalization. Now it aims simply to “contribute toward modifying behaviors and motives that operate in the genesis of criminal acts” (Gendarmería de Chile 2012:1–5 emphasis added).

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3 The private enterprise logic of productivity lead to the development of special departments to deal with organized crimes and to exploit the information produced in “strategic prosecution” designed by “crime analysis units.” (Chauan Sarras 2010: 21)

4 Surveillance, for instance is subdivided in four “sub-products: fulfillment of custody; physical security of personnel and inmates; transports, and following up on prison benefits. Each subproduct is given a metric and measured: “Fulfilment of custody” is measured in terms of escapees as a proportion of the population.
In sum, penal bureaucracies uphold a shared orientation toward order maintenance, centered in a renewed salience of formal legality and pro-active “productive” use of state attributions oriented to new objectives. All penal bureaucracies have been recentered on control over reintegration or remedying social misfits. They are less interested in individual criminals than in bureaucratic performance and the provision of services to the community, and in particular to victims. Following Garland, we can say that there has been a displacement in the axis of individuation of the 1960 (the urban criminal) and the 1970 and 1980s (the political opponents) to the victims, and from concern with reducing crime to a concern with reducing fear of crime, as well as a shift in emphasis from outcomes to outputs (Garland 2001:123). This managerialized and more judicialized penal administration in turn operates more and more with what Garland calls a “criminology of the self” (Garland 2001): a conception of deviants as responsible and calculative individuals. The police assume this model in its “preventive” designs to reduce opportunities and make crimes costlier. Prosecutors and defense accept deals with individuals who negotiate and assume responsibility. Custody administration neutralizes the tendencies of the habitual offender, or provides him with chances to become a responsible, entrepreneurial or, at least, an apt and docile worker. This individualized criminal is detached from his social context. The relevant social context now is that of the community of consumers to be served and protected.

Despite the greater currency of juridical categories and the common orientation toward service provision, the new judicial-managerial discourse of the penal bureaucracies should not be considered as homogeneously effective in orienting practices in all subsectors. In the restructured penal field of the 2010s, the formal-judicial orientation is more powerful and central in the more autonomous sectors of the penal arena. The formal-judicial orientation is particularly strong in the judiciary, especially in sentencing and the control courts. In the sectors closer to political authority (police forces, prosecutors and prison), administrations emphasize efficiency over legality (see the relative location and their emphasis in figure 5.4). Still, the view, discourses and rationalities of the three core bureaucracies overlap around the concerns for security and due process, as well as on efficiency. The paramount attention to security and service provision is also central in the national anti-crime policies that the executive branch and the legislators have put in place in the 2000s. This is no coincidence: the new discourses of due process, efficiency, and citizen security reflect the ascendancy of the new experts in the penal field who participated in shaping the contents of reform in each organization. After the reforms were initiated, those new experts assumed a central role in penal policy-making.
Figure 5-3 Chilean penal field, circa 1985

Statist capitals

Judicial authority

Legitimate coercion capital

Penal sector of bureaucratic field

Political Field

Academic Field

Juridical Field

Criminology Inst.

Supreme Court

Appellate Criminal Courts

Investigative Sentencing Crime Judges

Army

Carabineros

Counterinsurg. Experts

Managers • Legal Experts

Carabineros Secretariat

CNI

ODEPLAN

Executive Pinochet

Ministry of Justice

Legislative Commission

Investigative Police

El Mer.

El Mer.
**Figure 5-4 Chilean penal field, circa 2005**

*Statist capitals*

**Juridical Field**

- Judicial authority
- Legitimate coercion capital

**Penal sector of bureaucratic field**

- **Political Field**

**Bold New Agents** since transition to democracy
5.1.3. The rise of new experts and technocratic punitivism

The transformation of the penal bureaucracies, whereby political authorities have backed the new experts and their plans, has given those experts—human rights lawyers and economists in think tanks and university research institutes—a central position in the design of new penal policies after those reforms began to be implemented in the early 2000s. The effective transformation of penal bureaucracies, in particular the police and courts, gave recognition to the reform experts. As a result of their incorporation in an influential position in the penal field, penal policy making in post-reform Chile has not veered toward a populist punitivism giving the upper hand to reactive political agents and victims groups (Pratt 2007), as has been the case in other Latin American countries (Chevigny 2003; Muller 2011a;), including Argentina, as we will see.

Experts, bureaucratic elites and political agents have remained in control of penal programs in the last decade. As a result, even if penal bureaucratic capacities have constantly expanded in Chile, the deployment of penal and policing powers follow the managerial and juridical discourse of new penal experts. These programs build on and reinforce the standards and principles followed by bureaucracy managers. Following Barker’s typology of penal governance as defined by degrees of centralization in producing penal policies and in conceptions about state capacity, the Chilean criminal-justice policy-making process fits what she calls a “pragmatist system”: a highly centralized pattern “where executive officials and technocrats dominate the business of governing” and an activist one in which “actors think of the state as a useful and effective instrument of governing” (Barker 2006:9–10). I call this pragmatist type technocratic punitivism. It is centralized, dominated by penal experts, bureaucratic elites and political agents. But at the same time, it advances highly punitive policies that increase policing and penal control. I follow the ascendancy of experts in penal policy making in the 2010s and then turn to its highly punitive effect in the next section.

In the early 200s, after the reforms of the police and of criminal courts were in place and prison privatization had been decided, the government created a “security experts forum” to “develop a diagnosis of the security situation and advance proposals for a research and policy agenda” (Foro de Expertos 2004:1). Former participants in police reform (Hugo Fruhling and Lucia Dammert from CESC; Patricio Tudela, then working in the Investigative Police), in criminal procedure reform (Andres Baytelman from Diego Portales and Rafael Blanco, from the Universidad Alberto Hurtado; Catalina Mertz and Gonzalo Vargas, from Fundación Paz Ciudadana), and members of research centers (Sur Profesionals) participated in the forum. Besides these experts, government officers and police top managers were part of the commission.

After almost one year of work and after having written a “Diagnosis of Citizens Security,” the commission created a “Citizens Security National Plan” in 2004. These documents and their recommended policies, not surprisingly, followed the same principles of due process and legality (“respect for fundamental rights”), and showed the managerial concerns for “efficiency and coherence, focalization, territoriality, co-production of security, citizen

---

1 After the reform, all of these experts invested outside the state in think tanks and research center. Some were already in the academy and other reinvested. As we saw in the previous chapter, police reforms expert Fruhling created the Center for Citizens’ Security Studies, a research center at the University of Chile. Patricio Tudela continued working in the Investigative Police and then went to Paz Ciudadana. The criminal reform experts created JSCA and went back to teach to the most prestigious laws school. Fundación Paz Ciudadana continued its work, and got professionalized.
participation, equality of provision, monitoring and evaluation” (Ministerio del Interior 2004). This same elite modality of penal policy continued in 2006, when the government launched the “Public Security National Strategy” (Ministerio del Interior 2006). This modality continued in the more recent “National Security Plan” of 2010 (Ministerio del Interior Chile 2010). Making this diagnosis, elaborating plans, and then deciding on strategies allowed these experts, government officials, and top bureaucrats from the police and courts to organize the disparate programs and reforms of the 1990s as a unified plan in which the recent institutional development become the “institutional offer” of the state to provide “security services.” This gave the experts a semblance of authority and projected the sense of a new area of state intervention. Not just the police, the courts, or the prison, but the novel area of “citizen” security, went from being a political issue to an administrative realm of intervention over society.

By “diagnosing” and “planning,” the experts and the government created, performatively, the new realm of state intervention, that of security. The first two documents—the 2004 Diagnosis and the 2006 Citizen Security Plan—focused on three areas: “prevention,” “control,” and “access to justice.” The 2006 “Strategy” incorporated “sanctions” and “institutionalization.” The 2010 National Security Plan added “assistance [to victims] and “transversal elements” that included databases and “professional training.” In all these programs, the reformed and expansive bureaucracies were turned into means at the disposal of political agents to furnish citizen-consumers with adequate and fair “security services.” Indeed, the 2004 Diagnosis evaluated the existing “institutional offer on security” and advanced the idea that “producing security means generating a social good similar to education, health or jobs” (Ministerio del Interior 2004:7).

The “Diagnosis” and “National Plan” of 2004 proposed increasing “situational prevention”—modifying urban scenarios, transport conditions and fostering self-care practices—and “social prevention”— reducing family, community and school violence and illegal drug use. The “control” component involved the police, courts and prisons. It promised to improve police focus by determining “management targets” and by giving special attention to “situational and social prevention” (Ministerio del Interior 2004:59). Crime courts were part of the plan to increase “access to justice,” and the target assigned by the commission was to increase the proportion of cases solved, focusing investigations in “crimes of greater social connotation,” and aiming to “perfect criminal procedure, custodial and non-custodial sanctions and put in place a juvenile justice system.” (Ministerio del Interior 2004:59). In 2006, the government and the experts launched the “strategy” to implement the National Policy. The “strategy” complemented the 2004 “Citizens Security National Plan,” adding “sanctions” and “victims,” and the will to create a special state department in charge of security. It continued the same focalization programs for the police. It demanded that the courts increase investigation orders and judicial decisions (as opposed to prosecutorial decisions to divert cases) and that they obtain more convictions in “crimes of greater social connotation”(CGSC)—“a category defined by the government […] and] considered to generate the greatest public alarm” (Lucia Dammert 2009:227). These crimes include theft, injuries, burglary and robbery, rape and homicide. Prisons were also made part of “public security policy.” Contributions to security included “prison building” and hiring more personnel (Ministerio del Interior 2006:5). The Strategy was launched in 2006, and in 2008 the government reported that it had fulfilled “89.69% of [the Strategy’s] targets, and was delayed in 6.35%” (Oliveri Astorga 2011:17). Nothing could be further from penal populism.
Besides intervening in punitive and police policies, experts also designed and incorporated policies oriented to mobilize the community against crime, and implemented national crime surveys. The 2004 Diagnosis suggested anti-crime plans oriented to activate local networks. These included two modes of action: a general one called “Safe Commune” targeted to most urban sectors with high property crime, drug traffic, and poverty levels, and operated through local diagnosis and security strategies oriented to increase community participation; and another, special plan—the “Safe Neighborhoods” (Barrio Seguro) plan to fight the informal drug economy, which included recovery of public space by the police and the community, followed by work with at-risk groups and attention to juveniles to remove them from possible “criminal careers.” Finally, from 2003 onward, at the experts’ suggestion, the government put in place annual crime victimization surveys.

Political agents and bureaucratic elites have tapped into the fear of crime to increase police powers and the use of pretrial detention. In the mid-2000s, they discussed for two years the passing of new legislation—the “Short agenda against delinquency,” (Law 20253)—which would give police and prosecutors more power. Even if the law gave greater powers to the police, elevating punishment for violent crimes and facilitating pre-trial detentions, it retained its technocratic style. The act authorized police to detain individuals for up to eight hours to check their identity, investigate their involvement in crimes, and check if there were detention orders against them; authorized detention on flagrancy for up 12 hours after the event; mandated harsher punishment for violent crimes (kidnapping, rape, manslaughter, burglary); and facilitated the work of prosecutors’ assistants. Still, these measures were presented following “studies and proposals of the Prosecutor’s Office and the Public Defense. While it aimed to “repress in a more energetic manner certain crimes, to reduce the fear they produce” and deal more effectively with “habitual or dangerous delinquents who are free or could easily recover their freedom,” the same message also highlighted government work in creating a centralized minister in charge of security to fight drug consumption and drug trafficking, and to work on new programs of social and situational prevention (Congreso de la Nacion de Chile 2008:6). In 2010, when the center-left Concertación coalition lost the presidency and right-wing parties secured the executive branch, President Piñera launched a new version of the 2006 Strategy. The 2010 National Security Plan followed the same contents of the 2006 programs and added “Assistance [to victims] and “transversal elements,” which included new databases and “professional training.” As we can see, the experts continued to dominate penal policy making.

Having shown the new structure of the field, discourses and values as well as the centrality of new experts in policy-making, I now describe how these new penal bureaucracies operate on the ground, surveying their highly punitive efficacy.

5.1.4. The Chilean penal state: police panopticism and prisonfare

The new penal state of Chile, following Wacquant’s distinctions between the American and European paths to penalization, can be characterized as combining a panoptic police and a segregative-retributive logic (Wacquant 2009b:24). In Chile, as in France, penalization is effected through the police and the courts but, as in the United States, it is complemented with expanded confinement and supervision, constituting as it where, a hybrid. As such, Chile’s penal bureaucracies do not conform to the typical representation of the neoliberal Latin American penal state, centered on the prison and in “a political and institutional environment marked by the centrality of informal practices” with agencies acting in “illegal, arbitrary, abusive and violent—
if not lethal” ways” incorporating “a variety of actors operating beyond the formal bureaucratic field—vigilante groups, death squads and militias” and centered in the expanded prison (Muller 2011b). On the contrary, the police in Chile have become much more legally formalized after reforms and present surprisingly low levels of lethal violence and abuse, especially considering the intensity of their infrastructural power. Chile’s courts are less corrupt now than before. Prisons, however, continue to be highly despotic and violent, though less so in private prisons than in public ones.

5.1.4.1. Police panopticism

Under the counterinsurgency doctrine dominant during the dictatorship, police forces intervened in communities and organized policing to repress the emboldened working classes, middle-class political dissidents in the 1970s and then again in the mid-1980 against the organized urban poor. This included a proactive repression of protests and an a counterinsurgency control of poor neighborhoods (Colectivo Memoria Historica Domingo Cañas 2005; Paley 2001:73–74). The political control and coercive supremacy logic prevailed over crime control to the point that publicly recognized criminals in shantytowns were not detained if they did not appear in rosters of political suspects and known criminals were routinely used as domestic spies and informants of political opponents (Paley 2001:73) Political repression involved counterinsurgency techniques of raids, information gathering through tortures and infiltration, terrorizing the population, spreading rumors, mass arrests of all men in the targeted shantytowns. Those modalities of operation have dramatically changed. Reflecting the consensus on “common crime” prevention, and in particular those crimes of greater social connotation, the police have increased arrests in the past decade for “crimes of greater social connotation,” a special criminological-bureaucratic category of offenses comprising burglary, thefts, homicides, and rape, and it has reduced those for alcohol cases and misdemeanors. At the same time and following the greater processing capacities of courts, the proportion of arrests following judicial orders has increased between 1980 and 2010 (Figure 5.5). From the arrests for “crimes of greater social connotation,” the police in the 2000s have focused mostly on petty crimes of theft and mild injury, which represented 72% of arrests within the CGSC category in 2004 and 81% in 2011.
Figure 5-5 Cause for arrests by the Carabineros (1988-2011)


Table 5.2 Arrests for CGSC per 100,000 inhabitants in Chile (2001-2012)

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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Thefts</td>
<td>315.5</td>
<td>415</td>
<td>505</td>
<td>464</td>
<td>430</td>
<td>424</td>
<td>489</td>
<td>493</td>
<td>536</td>
<td>500</td>
<td>549</td>
</tr>
<tr>
<td>Mild Injuries</td>
<td>-</td>
<td>-</td>
<td>142</td>
<td>101</td>
<td>89</td>
<td>91</td>
<td>96.4</td>
<td>128</td>
<td>149</td>
<td>170</td>
<td>194</td>
</tr>
<tr>
<td>Serious Injuries.</td>
<td>-</td>
<td>-</td>
<td>64</td>
<td>45</td>
<td>39</td>
<td>33</td>
<td>32</td>
<td>43</td>
<td>47</td>
<td>48</td>
<td>49</td>
</tr>
<tr>
<td>Burglary</td>
<td>55</td>
<td>57</td>
<td>61</td>
<td>50</td>
<td>54</td>
<td>56</td>
<td>68</td>
<td>68</td>
<td>71</td>
<td>55</td>
<td>58</td>
</tr>
<tr>
<td>TOTAL</td>
<td>711</td>
<td>809</td>
<td>914</td>
<td>778</td>
<td>728</td>
<td>735</td>
<td>828</td>
<td>860</td>
<td>946</td>
<td>905</td>
<td>979</td>
</tr>
</tbody>
</table>

Source: Secretary for Crime Prevention, Interior and Security Ministry, Chile (2013)

But besides increasing arrests for cases that are considered more relevant to the judiciary and central government “National Security Policies,” the proactive police increased arrests oriented to mere urban order. Rationalized as reinforcements of their deployment “Beat Plan” the Carabineros and the Investigative Police took detentions for verification of identity to new heights. The “verification of identity” policy allows the police to hold citizens for up to eight hours to investigate crimes and verify pending orders without judicial intervention. The Carabineros almost doubled their use of this policy since 2008 (See Figure 5.6.). The number of identity checks in 2012 translates to a rate of 18,000 identity checks for every 100,000 inhabitants, or 18 checks for every 100 people.
What is extraordinary about this massive panoptic policing is the concurrent reduction in the number of police killings. Between 1990 and 1994, the police killed 106 citizens in the whole country (Ramos and Guzmán Luigi 2000: 135). While systematic data is not available, the rate of homicides by the police seems to be lower than in Argentina. For contrast consider that the Federal Police of Argentina, killed around 71 citizens in the city of Buenos Aires alone in 1999, while according to a tally from journalistic reports, 56 citizens were killed by the Chilean police while in custody (Claudio Fuentes 2005:56) in the entire period between 1990 and 2004. Regarding complaints for physical abuse, including torture, 3,877 complains were presented before the Chilean courts between 1990 and 2000, an average of 378 per year (Fuentes 2005:46). There were 2,021 cases between 2000 and 2004. In 2007 there were 369, and 567 in 2009 (Instituto de Derechos Humanos 2010:104). While high, only a fraction of the average 550,000 arrests were accompanied by reports of abuses.

This massive deployment of police capacities is used not for detaining violent and “dangerous” criminals, as the media has argued. The main targets of arrest are “habitual offenders” against property, order, and urban peace. Statistics are not available on the targets of verification-of-identity detentions, but qualitative reports consistently show that they are used to control the economically dispossessed and the unruly in the stigmatized poblaciones. Of those arrested and presented before judges, the great majority are from the working classes, usually unemployed or underemployed. In 2010, almost one-third of arrestees were manual laborers (27%), while 20% were low-level employees. Both groups are mildly overrepresented (22% and 14% in the general population, respectively), but not as much as the unemployed, which in 2010 were 7.7 in the total population but comprised 15% of arrestees. Within the arrestees, the most overrepresented group are under-educated young men. Those with only primary education comprise 36% of arrests compared to 15% of the population above 15 years. Young men between 16 and 21 are 7% of the population but 20% of arrestees. The typical arrest involves
young men, single, under 40, from working-class backgrounds, working and unemployed, with primary or secondary education, for petty crimes against property, violence or drugs (Instituto Nacional de Estadísticas 2011a). The Investigative Police targets the same fractions in older male cohorts. From those arrested by the Investigative Police in 2010, those under the age of 30 comprise only 46%, with 42% between 30 and 50. In Chile, arrests accompany men during most of their working years. In groups above 20, the modal reason for being arrested was failure to pay alimony, followed by threats, small thefts and drugs (Instituto Nacional de Estadísticas 2011b). In sum, the Carabineros and Investigative Police deal mostly not with dangerous hard-core criminals, but with highly informal and impoverished members of the working classes, regulating their disruptions of the consumer economy through thefts, fights, participation in the informal drug economy (especially “micro-trafficking”), and the violation of officially enforced family rules and obligations, arresting them for not paying alimony or for domestic violence.

5.1.4.2. Expanded imprisonment and surveillance

This highly panoptic police feeds an hyper-punitive and also panoptic criminal justice. The production logic of prosecutors, along with the orientation toward protecting the public and victims, has resulted in criminal courts with stupendous capacities to produce convictions, activated by the productive dispositions of prosecutors and their culture of efficiency. These convictions are produced through simplified procedures and plea-bargain deals. In the years after the full launch of the new criminal procedure, the number of convictions, even if arrests remained stable (see table 5.7) went from around 40,000 in 2005 to 120,000 in 2008. The courts have become highly efficient mass producers of convictions—of type of “solution” in managerial-legal parlance (See figure 5.7).

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2 Simplified procedures apply in cases of crime sanctioned with up to two years of prison, and implies a recognition of responsibility. The abbreviated procedure recognition of responsibility and facts and can involved convictions of at most five years.
Along with the sheer growth in the volume of cases, the Chilean courts have become more punitive not because “of the toughening of existing laws, the lengthening of sentences as well as the enacting of new laws and the creations of new instruments” (Muller 2011, 8), as the thesis of penal populism predicts. It has grown more punitive through its sheer increase in convictions for arrests in non-serious crimes against property. The new courts increased conviction rates (the total number of convictions over the number of known offenses reported to authorities for CGSC) (See table 5.8.). Productivity standards, a proactive ethos and greater resources and prosecuting capacities fueled this increase in the sanctioning of petty property infractions. After 2005, the rate of conviction for CGSC rose from 5% of those reported to 12% of those reported, and the rate of convicts per 100,000 inhabitants increased by a staggering 412%. If we consider that 85% of arrests for CGSC are for thefts and mild-injury crimes (fights) (Table 5.7), we can also conclude that the increased punitivity affects overwhelmingly non-violent offenders.

Figure 5-8 Reports, convictions and conviction rates for CGSC (1998-2007) (Chile)

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Reports/ 100,000</td>
<td>ND</td>
<td>1,623</td>
<td>2680</td>
<td>3160</td>
<td>3260</td>
<td>3230</td>
<td>3225</td>
<td>3459</td>
</tr>
<tr>
<td>Total convictions</td>
<td>12441</td>
<td>12928</td>
<td>13851</td>
<td>19793</td>
<td>23153</td>
<td>36202</td>
<td>55554</td>
<td>73219</td>
</tr>
<tr>
<td>Convictions/100,000 reports</td>
<td>.31</td>
<td>3.51</td>
<td>6</td>
<td>10.6</td>
<td>12.6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Convictions/100,000 inhabitants</td>
<td>6.2</td>
<td>87.9</td>
<td>124</td>
<td>143.8</td>
<td>222.6</td>
<td>338.1</td>
<td>441.3</td>
<td></td>
</tr>
</tbody>
</table>

Remarkably the expansion of Chilean criminal justice, which is less subject to populist demands than to managerial concerns, has become more punitive through shorter sentences. The sheer expansion of courts and their enormous productivity increased the prison population, but did so by applying shorter and shorter sentences (Matus Acuña and Peña y Lillo 2012; Salinero Echeverri 2012). Those condemned for not paying fines went from 1% in 2001 to 13% in 2012, but the average duration of prison stays for debt is less than a week. As a result of plea bargaining, the number of people convicted for thefts and burglary has shot up, but they now receive dramatically shorter sentences. In 2003 the average sentence for theft was 1,318 days, while in 2008 it averaged 160 days. Violent robbery average sentences went from 1,494 to 887 days in the same period. All CGSC and drugs sentences underwent a similar pattern (Matus Acuña and Peña y Lillo 2012). The reduction of terms resulted from prosecutors’ tendencies to petition for lower convictions in order to use alternative procedures (Duce 2010:26-217). This sentencing pattern has refocused judicial work from violent criminals to repeat offenders who receive multiple short sentences (Duce 2010:262). This in itself reveals the autonomy of judicial-efficiency standards, and the authority of prosecutors in relation to political agents and the public: instead of increasing the severity of sanctions, as the penal populism thesis implies, prosecutors and judges decreased it. In Argentina, as we will see next, the tendency has been to produce more severe sentences. The increased productivity of the courts since 2000 and the massively expanded use of short prison sentences has boosted incarceration rates, putting Chile at the vanguard of the Southern Cone and in third place in Latin America, after only French Guiana and Panama. In 2012, Chile imprisoned 308 inmates per 100,000 inhabitants, three times the rate in 1980.

**Figure 5-9 Prison population in Argentina (federal) and Chile (1972-2010)**

![Graph showing prison population in Argentina and Chile](image)

Sources: Secretaría de Política Penitenciaria (1997) CELS (2005), Ministerio de Justicia Chile.

The recent greater concern with security reduced the numbers of those released on parole (see table 5.9). The combination of greater preventive detention, greater number of sentences, greater use of prison for fines, and the reduction of releases explains why Chile became the regional imprisonment champion, in particular since 2005, after the criminal procedure reform was fully implemented.
Table 5.3 Convictions in Chile: custodial and non-custodial (2000-2010)

<table>
<thead>
<tr>
<th>Convict population /year</th>
<th>2000</th>
<th>2005</th>
<th>2010</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custodial sanctions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Detained</td>
<td>2,391</td>
<td>1090</td>
<td>160</td>
<td>93%</td>
</tr>
<tr>
<td>On remand</td>
<td>13,642</td>
<td>11,739</td>
<td>10,817</td>
<td>-20%</td>
</tr>
<tr>
<td>Convicts</td>
<td>16,018</td>
<td>22,642</td>
<td>40,464</td>
<td>152%</td>
</tr>
<tr>
<td>Sub-total</td>
<td>32,051</td>
<td>35,501</td>
<td>51,441</td>
<td>60.5%</td>
</tr>
<tr>
<td>Non-custodial sanctions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation</td>
<td>26,537</td>
<td>19,229</td>
<td>34,721</td>
<td>30.80%</td>
</tr>
<tr>
<td>Intensive Probation</td>
<td>3,462</td>
<td>5,330</td>
<td>11,582</td>
<td>234%</td>
</tr>
<tr>
<td>Night prison</td>
<td>1,700</td>
<td>1,816</td>
<td>5160</td>
<td>204%</td>
</tr>
<tr>
<td>Parole</td>
<td>1,836</td>
<td>850</td>
<td>580</td>
<td>-68%</td>
</tr>
<tr>
<td>Daily release</td>
<td>673</td>
<td>735</td>
<td>810</td>
<td>20.40%</td>
</tr>
<tr>
<td>Sub-total</td>
<td>34,208</td>
<td>28,283</td>
<td>53,345</td>
<td>55.9%</td>
</tr>
<tr>
<td>Total</td>
<td>66,584</td>
<td>64,252</td>
<td>105,472</td>
<td>58.40%</td>
</tr>
</tbody>
</table>

Source: Fundación Paz Ciudadana (2011:31)

The “judicial” rationalization of the prisons through the increase in the proportion of inmates with sentences does not extend, however, to the protection of inmates’ rights. Prisons are overcrowded, averaging a 48% excess in inmates over official occupancy levels. This excess reaches 200% in the Santiago Penitentiary, which housed 6,237 inmates for only 2,446 places in 2008. Chile’s public prisons provide limited food and health services, and rehabilitation is concentrated in schooling and handicraft works, available for around a third of the population (Oliveri Astorga 2011:42). The situation in private prisons, housing around 20% of those confined, is somewhat better regarding food and health care provision, with less overcrowding and violence, but more suicides. If we follow Birbeck’s typology (2011) of prison regimes in Latin American, we can say that public prisons in Chile continue to be places of “internment,”—with limited custody, low levels of separation according to judicial status, low supervision by guards, low isolation from the outside, and high self-organization of inmates—whereas privatized prisons have become sites of “imprisonment”—with higher regimentation, supervision, isolation and more formalized relations and routines. Both, however, continue to have extremely low levels of judicial and public accountability.

This growing population behind bars is complemented by an almost equal number with non-custodial sanctions. As we saw in the last chapter, economists in the early 1980s preserved community sanctions to reduce costs. The number of convicts serving community sanctions has continued to grow since the mid-1990s. In the last decade, such sanctions have become more intrusive with the increased use of intensive probation, which involves libertad vigilada, a modality that includes individualized treatment under a strict surveillance and guidance of an “Intensive Probation Officer.” Intensive probations went from 10% in 2000 to 21% of all community sanctions in 2010 (see Table 5.9).

Adding the numbers of inmates confined and those serving community sanctions, in 2010 the prison administration manages more than 100,000 individuals, which amounts to a rate of
640 people under judicial control at any time per 100,000 inhabitants. This expanded penal supervision is legitimated by a discourse of security but also one of service provision. These discourses overcome the human-rights critiques of overcrowding, prison violence, and abuse by guards. In their annual reports, authorities and prison elites refer constantly to “investment” in the well-being of inmates through privatization and the promise to achieve better levels of security, attention, and assistance.

This technocratic punitivism has been extended to other social groups. The most clear example is the development of juvenile courts and detention centers and community sanctions. Juvenile courts were created in 2007 after the age of penal responsibility was lowered from 16 to 14. The “Juvenile Penal Responsibility Law” (20,084) was passed under the same principles of human rights, procedural efficiency, and an orientation toward security. It combines admonitions, incarceration and community sanctions (Diaz González 2010). After five years of implementation, the juvenile courts went from 7,097 under control in 2007 to almost 14,000 in 2012. From the 41,000 juveniles between 14 and 18 that passed through its hands, 10% were sent to closed or semi-closed confining institutions, 41% were sanctioned to community service and the remaining 46% were put under probation and intensive probation (Servicio Nacional de Menores 2011:15).

This technocratic punitivism of the Chilean penal state properly pertain to what Waquant calls prisonfare, a “lattice of policies—encompassing categories, bureaucratic agencies, action programmes, and justificatory discourses—that purport to resolve urban ills [and mangemarginal population] by activating the judicial arm of the state rather than its social and human services,” resulting in the “endless circulation through penal circuits (police, court, jail, prison and their organizational tentacles: probation, parole, criminal, justice databases, etc.)” (Wacquant 2013b:13). The population targeted by the courts and landing in prisons have the same profile of those detained by the police: uneducated single men, with 50% of them with just primary education (three times more than the proportion of 15% in the total population). They come from urban sectors, they are unemployed or faring in manual works, from families of five or more; most of them are convicted for burglary, thefts, light injuries or drug possession. Among the younger population (18 to 28) the most common crime is burglary and for those between 28 and 38 traffic violations (18%) and drugs (16%) (Centro de Ética 2012). From the population under intensive probation 70% are under 30, 70% come from low-income groups, and 14% from extreme poverty; 66% are high-school dropouts, and 60% have no jobs or only temporary positions at the moment of arrest (Verbal Rios 2008:155).

The “punitive containment of the dishonored and dispossessed” (Wacquant 2009) in democratic Chile is an enlightened prisonfare, legitimated by the consecrating authority of new experts that have provided the basic “justificatory discourses” of the “right to security” and refurbished the penal bureaucracies according to standards of due process, efficiency, and service provision. These new discourses and models also appear to legitimate those bureaucracies in eyes of the citizens. Table 5.4 shows that confidence in the police increased between 1997 and 2009. Even more importantly, this legitimation derives from the service-provision discourse. According to a national 2007 survey, citizens trust the police because they appear serviceable (78.6%), disciplined (75.4%) and respectful (70.5%), privileging those traits over their efficacy in crime prevention (55%) (Arias and Zúñiga 2008:46).
Table 5.4 Levels of trust in the police and the courts (1997-2009)

<table>
<thead>
<tr>
<th>Trusts</th>
<th>Police</th>
<th>1997 Low level Employee</th>
<th>Self-employed informal</th>
<th>2003</th>
<th>2007</th>
<th>2009 Low level employees</th>
<th>Self-employed informal</th>
</tr>
</thead>
<tbody>
<tr>
<td>A lot/Some</td>
<td>53 (52)</td>
<td>(39)</td>
<td>48,4</td>
<td>68,8</td>
<td>59,5 (60)</td>
<td>(51)</td>
<td></td>
</tr>
<tr>
<td>Little/None</td>
<td>42 (47,4)</td>
<td>(60)</td>
<td>54,7</td>
<td>30,2</td>
<td>1,3 (39)</td>
<td>(48)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Trusts</th>
<th>Courts</th>
<th>A lot /Some</th>
<th>Little None</th>
</tr>
</thead>
<tbody>
<tr>
<td>A lot/Some</td>
<td>32,8 (38)</td>
<td>(26,1)</td>
<td>20,9</td>
</tr>
<tr>
<td>Little None</td>
<td>57 (61)</td>
<td>73.9</td>
<td>59</td>
</tr>
</tbody>
</table>

Source: Latinobarometro. Q: How much confidence do you have in the following institution?

Today, Chileans from all classes trust the police more than a decade ago. Even low-level employees and those self-employed in the informal sector, many of whom are constantly targeted by the police, have more confidence in the police, and the same confidence in courts as before, or even more if we only look at the period between 2003 and 2009. Confidence in the police is not only greater than confidence in courts; it is also greater than the confidence citizens have in the administration in general (see Table 5.5). Considering that the police are the portal to most penalizing practices, which take place behind (court and prison) doors—except for the few oral trials (3%)—one could argue that the greater acceptance of the police is crucial to make more acceptable the panoptic and technocratically punitive penal state in totum.

Table 5.5 Trust in public institutions, Chile 2009

<table>
<thead>
<tr>
<th>Institutions:</th>
<th>A lot /Some</th>
<th>Little/No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Administration</td>
<td>42,3</td>
<td>56,9</td>
</tr>
<tr>
<td>Police</td>
<td>59,5</td>
<td>40,3</td>
</tr>
<tr>
<td>Judiciary</td>
<td>37,5</td>
<td>62,5</td>
</tr>
</tbody>
</table>

Source: Latinobarometro 2010

In sum, after reforms in the first decade after the closing of the dictatorship, the Chilean penal state grew and extended its capacities through the concurrent expansion of the police, courts, prisons, and on the supervisory front. A panoptic police feeds a fast-track criminal-justice system that presents itself as efficiently dedicated to securing the rights of defendants, under the ideology of an oral procedure that grants due process guarantees. The inmate population and the number of people under judicial supervision have grown by a factor of three and four respectively. Recourse to more-stringent community sanctions and probations has also increased and has extended to juvenile delinquents. This newly expanded panoptic and punitive penal system differs from the portrait of the neoliberal penal state in Latin America as becoming increasingly more informal and more atomized (Iturralde Sanchez 2010b; Muller 2011b), and the recent evolution of the Chilean bureaucracies runs contrary to what has happened, for example, in Brazil, where it has eroded the citizenry’s confidence in the state. In Chile, the penal branch of the state bolsters the legitimacy of the government. This is not the case in Argentina, where the citizenry trusts the police less than other sectors of the administration, which has been losing the confidence of the citizenry after the failed reforms of the 1990s. This lack of confidence, and of
the failure of legitimation through penal expansion and exaltation, stems from the ways in which the Argentine penal arena got reconstituted after dictatorship.

5.2. Argentina´s federal penal arena: fractured, traditionalist and politically instrumentalized through populist punitivism

Out of the struggles to transform the penal bureaucracies in the federal criminal justice system, police, courts and prisons emerged a penal field with a low degree of orthodoxy across the different sectors, with different centers of orthodoxy (Gorksi 2013: 11), functionally interconnected but symbolically less integrated than the Chilean criminal justice system. In Argentina, the courts remained in a subordinate position after the passing of the new criminal procedure reform and the creation of the prosecutor’s office in 1994. At the symbolic level, instead of sharing a common new doctrine and know-how, each sector reverted toward a selective re-enactment of traditional organizational discourses. Regarding policy making, after the failures of reform, political agents have monopolized authority over penal policies in the wake of the limited success of bureaucratic reforms and changes that eroded the weak authority of penal experts. Since the early 2000s, the “axis of penal authority” (Pratt 2011) changed, from experts and political agents fighting militarized or conservative bureaucrats to a penal populism protecting crime victims and obeying electoral cycles. In this system of weak courts, police and prisons operate quite independently from judicial mandates and orders. The police have returned to high levels of intense and despotic policing—which they had temporarily softened during the Alfonsin administration—and the prison administration in the 2000s espouses a rhetoric of rehabilitation but devotes itself to confinement of still high proportions of detainees. Not surprisingly, this fractured penal arena is highly illegitimate in the eyes of the citizenry.

5.2.1. Structural continuity: a dominated judiciary, a powerful police and the same prisons

Law enforcement expenditures within Argentina’s federal budget did not follow a pattern of constant expansion as in Chile (Figure 5.10.). On the contrary, while the military budget began to decline after the transition to democracy—reflecting the military’s loss of political power—law enforcement bureaucracies experienced oscillations in their material and personnel resources. The police and prisons returned to their 1970s levels, while courts increased their budgets only mildly between 1982 and 2006 (See Figure 5.11). In contrast to the Chilean case, there is no traceable connection between reform programs and changes in budget, except for courts and prisons, but while budget participation decreased after 2000, the relative increase in prisons was used mainly to build new prisons, and not to hire more personnel.
Figure 5-10 Budget allocation to defense and law enforcement (1980-2006)

Structural relations, measured in terms of public resources controlled by the different occupations of law enforcement, changed only slightly (see Figure 5.11). While the police’s share of the law enforcement budget declined by only 11% in Chile since the democratic transition, the federal police forces’ share of the Argentine law enforcement budget only declined by 6%. The share enjoyed by courts, prosecutors and defense services increased between 1985 and 2000, but declined after 2000 (Figure 5.10). Even of courts, prosecutors and defense services increased their budgets they increased it in only 4%—from 11% to 15%. This is very different from Chile, where judicial authorities increased their share from 10% to 19% of the law enforcement budget. If we only take into account the budgets for criminal courts and police, the distribution in 1985 was 88% for the police and 12% for prosecuting and sentencing, whereas in 2005 policing still received 85% and prosecuting and sentencing 15%.

This continuity in the distribution of resources prevented courts from extending their control over policing and imprisonment routines and standards. The police lost part of their previous powers, in particular the power to arrest on the grounds of suspicion, but still control de facto investigations and, by extension, the contents of investigative dossiers used for adjudication. The preservation of the overall structure of power distributed between judicial and police authorities in terms of budgeting was accompanied by a transformation in the police subsectors. Contrary to what occurred in Chile, where the investigative police grew the most, in Argentina, the preventive and militarized police were reinforced.

Within the police sector, the National Constabulary doubled its budget between 1985 and 2005 (see Figure 5.12) and expanded its jurisdiction over the territorial jurisdiction of the Federal Police in the southern part of the federal district of Buenos Aires, starting in mid-1990s and increasing enormously after 2011. The greater power of the National Constabulary consolidates a pattern toward purely preventive and reactive policing instead of an increase in judicially oriented policing, as in Chile.
The 1992 criminal procedure reform preserved the hierarchical relations among the different groups within the judicial corps. There, prosecuting and defense corps remained subordinate to judges functionally, but in particular in terms of resources. While in Chile prosecutors were able to capture more resources than crime courts (9% and 7% respectively) after the reform, in Argentina the opposite was true (4% and 9% respectively in 2005). The traditional judicial structure of powerful judges and dominated prosecutors is still in place. And even if the Argentine distribution of personnel within the judiciary is similar to the one we find in Chile after the reform of 2000-2005 (see Table 5.1 and Figure 5.1), in Argentina prosecutors remained legally subordinated to investigative judges and operate in a decentralized way. They are subordinate to low- and high-court judges that control investigations and sentencing, and decide on a case-by-case basis when to delegate investigations to prosecutors. The resulting limited power of the judiciary over the police derives, then, not only from the lack of personnel and resources, but also from the limited independence that prosecutors have from crime judges. This weak judiciary is also unable to control prisons through the Prison Supervisory Judges (Jueces de Ejecución Penal) given its limited capacities to supervise prisons, which are understaffed and centralized in Buenos Aires. In 2011, three judges controlled almost 9,134 inmates (Cámara de Diputados 2011; Diario Judicial 2012)
5.2.2. A contested symbolic order: from counterinsurgency to (police) order / (criminal) law / and (prison) security

The federal police, courts, prosecutors, defense, and prison organizations do not deploy a shared discourse around citizens’ safety, service provision or due process, as their counterparts do in Chile. The counter-insurgency doctrine and rituals advanced by the military, which dominated all those bureaucracies during the dictatorship, have not been replaced by a new overarching discourse shared by different organizational elites and strongly enforced over their subordinates, as in Chile. Instead, the Argentine counterinsurgency doctrine was replaced in the police by a revival of the doctrine of state security along with the greater use of narrative rationalizations centered on the celebration of bureaucratic heroes or of parts of the organization. In the courts, the liberal criminal and procedural law standards remain the traditionally dominant if weakly enforced discourse, highly contested by conservative and pro-due process fractions. The carceral
organizations returned also to ritually referencing a rehabilitation discourse disconfirmed in its practical obsession with internal order and escapes.

5.2.2.1. The police: Between traditional city police and “soldiers of the law”

The police forces have been taken away from their roles of national defense—protecting borders or fighting Cold War-era insurgents in the cities—and have been redeployed to fight common and organized crime, produce urban order, and provide security intelligence, in particular about political opponents. Still, even within the federal police forces, agreement does not exist across police forces about their role and mission. In the democratic era, and after the reversal of legalizing reforms by Menem (1989-1999), the Federal Police forces returned to their traditional doctrines of state security and urban order. The National Constabulary, meanwhile, combined its traditional doctrines but enriched them with a greater concern for serving the judiciary.

In the democratic era, and after Menem (1989-1999) reversed previous reforms, the Federal Police did not develop a new overarching doctrine, or rationalization of their collective, such as the metaphor of the private enterprise—which made some inroads in the mid-1990s. The Federal Police abandoned counterinsurgency doctrines—where they appeared involved in a new type of war fought in the military, social and spiritual fronts—and returned to their traditional mission definition of producing public security, protecting authorities, serving justice and producing urban order, including preserving “good manners and warranting public peace” (Auditoria General de la Nacion 2011:3). The force also returned to the old conception of the police as an “institution,” derived from French public law, developed by French legal scholar Maurice Hauriou and elaborated by police doctrinarian Fentanes in the early 1940s (1979:17). This notion has been resuscitated, defining the police as “a social reality… that the law recognizes… being neither a fiction or an whim of the executive branch” (Pelacchi 2008:901). This “theory” presents institutions as composed by an idea, a power and an ordered collective that makes it real (Pelacchi, 2008: 902). Revealing the influence of the dictatorship era, the theory is now combined with a corporative moral organicism: a vision of social and individual order defined by the constant threat of (material) forces—crime, immorality, or sensualist chaos to the (ideal) realms of state, society, and individual morality (Hathazy 2012). All this is reinforced through a “mythology” that praises martial bravery and technical sophistication (Donato 2007; Policía Federal Argentina 2007). In this view, the institution is self-sufficient: it only requires vocation of participants, the police officers themselves, reproducing the traditional image of the public servant serving the state, rather than serving citizens or clients, as in Chile.

The National Constabulary returned to the traditional organic sociodicy, similar to the one found in the Federal Police. In this sociodicy, gendarmes present themselves as morally qualified public servants, cultivating the organic Catholic worldview centered in “God, fatherland and family” and the military values of “vocation, esprit de corps and discipline.” More recently, in 2004, this doctrine was complemented with “institutional values”: “public responsibility, service quality, functional efficiency, public confidence” and “institutional policies: professionalism, planning and evaluation routines, internal communication, realism and rationality, with an emphasis in ethical principles, professional qualifications and motivation” (Gendarmería Nacional 2004:4) In its security and public order functions, this renovated discourse combines military and legal ideas and ideals under the figure of “the gendarme as a soldier of the law who worships the law to avoid becoming conditioned by human passions […] and political interests” (Gendarmería Nacional 2004: 22).
5.2.2.2. Traditional and contested liberalism in an atomized judiciary and prosecution bureaucracy

The courts are no less symbolically divided than the police. Within the national criminal courts, we find that (dominant) judges and (weak) prosecutors returned to their traditional criminal law doctrines combined with an irregularly followed due-process logic. However, these liberal criminal-law principles are not homogeneously held. In her ethnography of the Buenos Aires crime courts, Sarrabayrouse (1998) finds different groups with contrasting views on due process, punishment and the general treatment of defendants. On one side, traditional “conservative groups with a Catholic orientation”—richer in family contacts within the judiciary—stood opposed to “democratic” groups, richer in academic connections and poorer in family connections, and the “addicts to Menem,” who had political contacts, and had a trajectory of serving the executive branch (1998: 29-39). Three modes of access to the judicial function, political, scholarly and familiar, espoused repressive, progressive or ritualist orientations respectively, toward liberal penalism.

This same continuity of traditional legal and judicial routines is present in the dominated prosecutors’ office, created in 1994. The prosecuting corps assumes a role of passive accuser before the active judge, continuing with the old system logic, centered in judges. The judicial discourse of representing the state in upholding penal charges before judges is mixed with ad-hoc responses to political demands at the higher echelons. There is no general and defined corporate mission other than a routine reference to the legal mission of “the protection of legality and the general interest of society,” along with the protection of the “rights and life of citizens,” (Procurador General de la Nacion 2007:3). Prosecutors do not follow general prosecuting policies, as they remain subordinate to judges (Goranski 2010:25) and also consider each prosecutor to be, like each judge, an independent officer. Closer to a unified prosecuting policy are the “prosecuting units,” which deal with politically relevant issues: tax evasion, smuggling, corruption, violence in sporting events, and more recently—in keeping with executive-branch policies—kidnapping and dictatorship-era crimes by the state.

5.2.2.3. Rehabilitative-security prisons

When we turn, finally, to the prison administration, we find also a rhetorical return to rehabilitation combined and eclipsed by basic security concerns. Within this security orientation, many elements of the counterinsurgency logic of the 1970s can be recognized. The counterinsurgency approach conceived the prison as a front in the war against subversives. Political prisoners were weakened through isolation and torture and controlled through internal intelligence. In the new orientation toward controlling internal violence, the hardened inmate has replaced the specter of the hardened revolutionary. As in the other penal bureaucracies, prison officers have continued cultivating the traditional organicist sociodicy instilled by religious and military authorities during dictatorship. Prison officers combine their concern with security with

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3 These factions have been described also in the Federal Criminal Courts, in charge of federal crimes, where they appear divided between “pro-police” (“caneros”) courts and pro-due process (“garantistas”) courts, with different “informal working styles and judicial decisions” (Eilbaum 2009:84). This same combination of traditional provincial judicial families sharing power with politically appointed judges and employees, in particular imposed by the Partido Justicialista and the Radical Party during the 1990s, operates in the Federal Courts of Córdoba (Carreras 2005).
their traditional bureaucratic culture centered in a hierarchical vision of society based on moral
capacities, where sacrifice and duty are espoused to reject and degrade inmates and justify the
violence against them (Hathazy 2012; Mouzo 2012). This highly routinized orientation toward
pure order coexists with a discourse of human rights that the (weak) prison ombudsman and the
supervisory judges advance in this space. The human-rights discourse is also favored by the
likewise dominated rehabilitation experts—social workers, psychologists, etc.

The weak doxas of each field are themselves highly contested. The resulting symbolic
space is still structured around the traditional juridical discourse, but this discourse receives very
distinct elaborations and values in each sector. In the police, the law is a source of order and
imperium for the Federal Police “institution” serving the state: it is a source of devotion for the
gendarme, the “soldier of the law,” when policing the urban sector or protests. In the courts, of
course, the law is the main source of authority, but it is internally contested and negated in
practice through extended pre-trial detentions, low control over the police, lack of control over
prison conditions and limited processing capacities. In prisons, security and order production
trump legal standards on a daily basis. The informal culture centered in the organicist world-
view has very limited room for humanitarian and human rights consideration of inmates
considered inherently wicked. Except for the National Gendarmerie, the official legal mandates
of police, courts and prisons, have not been complemented with human rights discourses,
managerial values, a service-provision vocabulary, or even a politicized discourse of
“accountability” and democratic citizenship.

This contested traditional orthodoxy, contested at all levels of the field, among both elites
and low-level functionaries, reflects also the defeat of the different types of experts in the
different subfields, or their limited reach beyond those subfields. Criminal-procedure experts did
not become consultants on citizen security or prison policy. Legal scholars initially involved in
police reform did not become security specialists, or if they did, they continued needing the
backing of political agents to be effective. In this penal arena, political agents remain the most
dominant authority within the field. Their pervasive dominant position explains the recent turn
toward a penal populist modality of penal policy making since the early 2000s.
Figure 5-14 Argentine federal penal field, circa 1980
Figure 5-15 Argentine Federal Penal Field, circa 2004

Statist capitals

Legitimate coercion capital

Juridical Field

Penal sector of bureaucratic field

Political Field

Bold: New positions
5.2.3. Defeated experts and the rise of penal populism

Instead of the technocratic punitivism of Chile, where experts, bureaucrats and political agents dominate general penal policy making after reform, in Argentina it is political agents—the executive branch and legislature—that monopolized penal policy-making after the reform period of the 1980s and 1990s. Since the early 2000s, penal policies have consisted, not of grand general plans as in Chile, but of a succession of dispersed, ad-hoc administrative decisions interspersed by punitive legislative waves responding to extraordinary crimes or the pressure of electoral contests. This populist style derives directly from the defeat that the different experts suffered in the battle over reform and from their perennial subordination to political interests and priorities.

After the original reform policies were discontinued in the police, limited in the courts and derailed in the prisons, the experts and policy advisors involved in designing police reform, courts reform and prison renewal, lost their authority in those realms and have been sidelined by the central government and legislature in the context of penal policy making. Legal scholars, human rights activists, and penologists were powerful in the early moments of democracy as we saw in previous chapters (also Sozzo 2011:13–15). However, after the limited institutionalization of the models they proposed (the abandonment of community policing and policies to reduce police violence and corruption, the passing of a still inquisitorial criminal procedure, and the reduction of the penitentiary plan to prison building), they were excluded from penal policy circles.

In the policing field, the “philosophers” who favored the creation of a judicial police very soon lost their hold over police policies, sidelined by Menem and ignored during the return of the Radical Party to power in 2000 to 2001. During the last decade, police policies were completely in the hands of the government and the police itself. In this period, the government mobilized federal forces to deal first with protests and then with kidnappings, creating special collaboration teams with provincial police forces. This included providing the police with more resources and mobilizing the National Constabulary forces, first to patrol the greater Buenos Aires metropolitan area and then to patrol the south-east sectors of the capital city.

In the judicial and prosecuting fronts, plea bargaining and abbreviated process for cases of flagrancy were introduced in 1997, but at the behest of the executive branch to speed up trials and reduce prison overcrowding, which was becoming a problem for the executive branch. The criminal procedure reform experts have been excluded from intervening in penal policy making, and their protests against the penal populist measures I describe below have been plainly ignored. On the prison front, the penologists and human-rights scholars who favored the reduction of pretrial detention and the return to a rehabilitative progressive prison system have been pushed aside completely since the 2000s.

In this change in “the axis of penal power” (Daems 2008:98) that took place in the late 1990s and that got consolidated in particular in the mid-2000s, short-term electoral interests replaced long-term considerations and accumulated experience and studies were put aside for “impulsive and unreflective action… with the concern to… do something decisive to respond with immediate effect to public outrage” (Garland 2001:133). Since the late 1990s, the legislature—at the behest of the executive or through its own initiative—passed a string of punitive laws. In 1999, following demands by feminist
groups, the legislature increased maximum prison terms for sex crimes (Law 25.087). The same year, after a famous TV presenter killed two pedestrians with his car, the punishment for homicide in traffic accidents with multiple victims was elevated by two years (Law 25.189). In 2000, the government increased sanctions for crimes involving firearms (Law 25.246) and butchering of stolen cattle (Law 25.506). In early 2001, the “two-for-one” regime, which counted each day in preventive detention after two years on trial as two days when computing convictions, was eliminated. This change was based on the argument that the majority of (serious) crimes involved repeat offenders (Law 25.430). In 2002, after two police officers acting as bodyguards to a politician were killed, the legislature passed a law increasing the punishment for homicide of law enforcement officers (Law 25,601) (Gutierrez 2008:16–17). In 2003, the legislature increased penalties for kidnapping and using minors to commit crimes. In 2004, it passed a law that punished more severely the possession and carrying of firearms (Law 25886) and cattle rustling (Law 25.890). That same year, Congress elevated the minimum term served on life sentences before parole could be granted from 20 to 35 years, and eliminated the possibility of parole for serious violent crimes (Law 25892). The same law increased the maximum accumulated prison terms to 50 years (see Cesano 2005). These laws were passed following the influence of “victims, activists, and lobby groups” (Daems 2008:98). Feminist groups, policemen, middle-class victims of kidnapping, and lobbying groups acquired direct access to enthusiastic legislators guided by the firm hand of the executive branch, federal or provincial.

During this period of penal exaltation, the National Directorate for Criminal Policies continued applying victimization surveys that showed a reduction of thefts between 1997 and 2003 and of robberies between 1999 and 2003 (see Ciafardini 2006:62). That information was ignored. When the directorate launched a National Crime Prevention Plan in 2000, the central government did not back it: it did not have its own budget and could not coordinate its work with the police. In the same period, the writer of the National Penitentiary Plan of 1995, Julio Aparicio, continued working in the Justice Ministry, but justice secretaries just ignored him or “requested his opinion on some particular issues, but with no effects” (Interview, October 2010).

As we can see, reform failure not only meant the persistence of established practices and organizational routines, but also the removal of reform experts from the penal policy making circles. I now turn to the actual operations of the new “unreformed” penal bureaucracies in this fractured penal field of Argentina. These highly despotic, informal and ineffective criminal justice system, instead of legitimating the state as in Chile, erodes the state’s already weak legitimacy.

5.2.4. On-the-ground penality: a (mild) democratic dictatorship over the poor

The federal penal bureaucracies of Argentina conform better than those of Chile to the notion that Latin American penalization is centered around policing and expanded prisons (Müller 2011), with less influence of controlling and supervisory courts. As in Mexico or Brazil it is “marked by the centrality of informal practices” with “agencies acting in illegal, arbitrary, abusive and violent—if not lethal—ways” (Müller 2011:3). This is true even if it has not incorporated “a variety of actors acting beyond the formal bureaucratic field—vigilante groups, death squads and militias” (Müller 2011:3). These
illegal and violent activities, particular prevalent among the police and in the prisons, do not derive neither from long term historical traits that get more intense neoliberalism. This greater informality and corruption of the Argentine penal state in democratic times results from the triple convergence of increased informality, corruption and illegality consolidated during dictatorship, the recent economic crisis experienced by the state, as well as from the limited change in penal bureaucracies, where political agents impeded ending corruption and violence derived from the dictatorship era by discontinuing the timid internal changes of the first democratic administration.

As we saw in Chapter Two, in the mid- and late 1980s the government fought very strongly police corruption and reduced police abuses and killings (see Babini 1990; Andersen 2002:308–311). It also tried to put in place transparent and efficient criminal courts and a unified prosecuting office sheltered from judicial and political control. The government also tried to reduce prison violence and corruption. The economic crises in the late 1980s, followed by the continuous turn in executive branch policies during the 1990s and early 2000s, reflecting the lack of political will to return to a legalization of police practices and to change courts capacities and exert greater control over prisons, allowed for the return of corruption, abuses and illegalities in the different sectors of the administration. The resulting un-rule of law intensifies social marginalization through informally produced class discrimination, and as in the Brazilian case, “undermines” the “tenuous trust in public institutions” (Wacquant 2008:56). The specific modalities of deployment of police, sentencing, prosecuting and imprisonment powers by the federal government are responsible for those de-legitimating effects.

5.2.4.1. Back to police traditions: the continuity of despotic and lethal urban control

In its traditional modality of producing urban order, the federal police returned to intensive preventive detentions and continued with its use of lethal violence and massive raids over certain sectors or events. The Federal Police forces continued providing political intelligence at the national level and public security, crime control and urban order in the capital city. It now performs its “preventive protection” services following a reactive 911-style model, in place since 1970, responding to police calls and cultivating informal relations with members of the community. In each precinct, officers patrol on foot or by vehicle while plainclothes officers get involved in crime-investigation services in what are called “investigative brigades.”

In the early and mid-1990s, the main police strategy was to intensify preventive detentions (see Figure 5.6). During the 1990s, the number of detentions for identity verification varied enormously between 1992 and 1997 following the changing demands of the executive branch (Tiscornia, Eilbaum, and Lekerman 2001). However, in 1998, detentions “on the grounds of suspicion” were prohibited and the Federal Police only kept the power to detain for verification of identity for up to 10 hours. According to the scant statistics available, detentions for identity verification, apparently, have decreased since then, but I reality it is impossible to know given the lack of public statistics.

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1 A 2008 report of the National General Auditing Office (Auditoría General de la Nación) describes the force as lacking any general planning and operational schemes, with no general deployment plans, no unified report system between precincts to plan operations, and no procedures to determine performance levels or even to control activities (Auditoría General de la Nación 2011:55)
Regarding arrests, after 1998, it is also almost impossible to determine their number since they are not public, reflecting the contested nature of police power. What we do know is that arrests for felonies continued at a surprisingly static level, remaining between 35,000 and 40,000 arrests per year for felonies. This is astounding given that victimization surveys show increases in crime, in particular armed robbery, which doubled its frequency between 1995 and 2003 (Ciafardini 2006:62), but also of petty thefts, the most typical cause for arrest.

Figure 5-16 Arrests by Federal Police, City of Buenos Aires (1992-2005)

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<tbody>
<tr>
<td>For misdemean (Identity Ver).</td>
<td>59315</td>
<td>135038</td>
<td>150830</td>
<td>153473</td>
<td>ND</td>
<td>ND</td>
<td>ND</td>
<td>ND</td>
<td>ND</td>
</tr>
<tr>
<td></td>
<td>37884</td>
<td>39346</td>
<td>92980</td>
<td>ND</td>
<td>ND</td>
<td>ND</td>
<td>40895</td>
<td>ND</td>
<td>ND</td>
</tr>
<tr>
<td>For felonies</td>
<td>34536</td>
<td>39346</td>
<td>37616</td>
<td>41885</td>
<td>47541</td>
<td>ND</td>
<td>41272</td>
<td>39910</td>
<td>ND</td>
</tr>
<tr>
<td>Total</td>
<td>93851</td>
<td>134036</td>
<td>172922</td>
<td>246008</td>
<td>201014</td>
<td>ND</td>
<td>ND</td>
<td>ND</td>
<td>ND</td>
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</tbody>
</table>


The (apparent) reduction of detentions for verification of identity and the stable number of arrests for victims has been combined, however, with an increased use of lethal force and documented involvement in corruption cases. Federal Police officers killed 23 citizens in 1998, 71 in 1999 and 533 citizens between 2002 and 2011 (CELS 2012; Sozzo 2002). From 27 killings per year in 1998, during the next decade the number of police killings grew to an average of 53 per year. According to Daniel Brinks, who studied police killings in Buenos Aires city in the late 1990s and early 2000s, most killings take place during police work: they occur during routine street policing (28%), are straightforward executions (25%), derive from torture (12%), or occur under custody (9%). Only 25% of killings occur in private interactions or are of bystanders (Brinks 2004:84). Police killings constituted 19.5% of all homicides in 1996, and 28.3% of those in 2001 for the city of Buenos Aires (CELS 2002:6). This high level of police violence had very low probabilities of conviction, averaging 24%, but declined to 18% for cases of killings in routine police actions—as opposed to cases of private violence (37%). If the victim was perceived as “involved in a violent crime that presented a serious risk to other members of society,” the probability goes down to zero. Brinks observes that the de facto monopoly of the police over investigations, which affected the possibility of producing proof, explained a great part of this impunity. In his words, “the principal conduit to the legal system for information about claims is the same organization that is being investigated in these cases, and those who are supposed to supervise the investigation have little capacity to by-pass it. The reforms that transfer responsibility for the investigation to the prosecutor have not yet changed this” (Brinks 2004:152). The paths that police and criminal-procedure reforms took in the federal criminal-justice system facilitate the continuity of police violence and police impunity, which is exactly what the reformers of the mid-1980s tried to modify.

This highly despotic and arbitrary police, with police killing rates that remained also highly corrupt in their routine functioning. According to political scientist Marcelo
Sain, the police continued participating in protecting and leading illegal businesses throughout the 1990s and the 2000s. This included not just the traditional management of prostitution, illegal gambling, or controlling streets vendors and irregular hotels and brothels: “Recently the illegal financing of the police incorporated bribes, extortions, thefts and robberies, and in particular complex criminal activities such as drug trafficking, violent auto-theft or highway, bank-robberies, [and] human trafficking” (Sain 2008:159). This increased police participation in crime has been accompanied by the proliferation of fake cases, where homeless individuals are discovered “in flagrante” with drugs or stolen goods, known as “invention of cases” (“fabricación de causas”) (Lucia Eilbaum 2009:99–116). Sain describes the Federal Police patterns of policing as divided along three lines: harassment and control of the poor, young, and marginal population through constant surveillance and detentions; management of illegal activity and organized crime; and political repression in line with the demands of political masters (Sain 2010). The National Constabulary patrolling the south-western sector of urban territory of Buenos Aires, an area of the city with high levels of poverty and unemployment, has also veered toward highly violent policing, in particular repressing illegal occupations, and more generally policing protests and routine movements of inhabitants of the shantytowns and poor neighborhoods (see Auyero 2010:5).

5.1.4.2. Punitive (and inefficient) courts and despotic prisons

As in the Chilean case, policing is not oriented to serious crimes, but manages the urban poor and marginalized populations. The targets of police detentions, arrests and killing are, as in Chile, young, poor, working-class males, but with an over-representation of immigrants from neighboring countries or elsewhere in the region. In 1995, the proportion of foreigners reached 25% for those detained for felonies and 17% for misdemeanors, including mainly Peruvians, Paraguayans, Chileans and Bolivians (Pelacchi 1995). Combined, those groups represent only 2.5% of the Buenos Aires city population. Of those killed by the police, 85% are males, 88% are 35 or younger, with a “disproportionate targeting of the young, lower class, unemployed males from precarious housing sectors” (Brinks 2004:86).

These despotic police, which make a relatively low level of arrests (1,300 per 100,000 in the city of Buenos Aires in 2005 compared to 9,000 per/100,000 in the metropolitan region of Santiago), feed a highly inefficient judiciary that has preserved low levels of productivity, high levels of prisoners on remand, and that concentrates on crimes against property. After criminal-procedure reform was implemented in 1992, the judiciary’s output remained similar to the 1982 levels: 3,600 convictions per year, with a rate of 125 convictions per 100,000 inhabitants in the city of Buenos Aires. The Buenos Aires judiciary increased its output to 197 convictions per 100,000 inhabitants in 2004 and 221 per 100,000 in 2008. This increase pales against the rise in producing convictions in Chile, where conviction rates went from 123 per 100,000 inhabitants before the full implementation of reform in 2005 to 727 per 100,000 three years later.
This still highly inefficient criminal-justice system has in turn become more punitive with those it convicts, in particular after the turn to penal punitivism in 2001. Figure 5.18 shows that the non-punitive consensus during the 1980s and 1990s described in Chapter Four produced similar numbers of convictions but also preserved higher levels of conditional sentences during the 1990s. After the rise of penal populism in the early 2000s, judges began ordering the effective fulfillment of convictions. While the proportion of conditional sentences was 44% and that of effective convictions 43% in 1996, in 2006 effective convictions rose to 52% and conditional convictions declined to 37%. Some studies have argued that this increase in severity is derived from the “lack of sensibility of judges” regarding overcrowding (CELS 2005:34). While legislators are responsible for part of these increases, political pressure on judges is also part of the answer, with judges being instead sensitive to public opinion and even political threats of removal if they free “dangerous” delinquents who might commit crime.

Since 2000, judges do not only deliver fewer conditional sentences—they also hand down longer sentences. Between 2000 and 2006, prison convictions of more than three years increased 11%, and those for at least five years 147%. In the same period, convictions for less than three years, which are considered short sentences, only increased 42%. As we can see, in the federal criminal justice case, penal populism has produced somewhat more sentences for significantly longer terms. This is the opposite of what happened in Chile, where after criminal-procedure reform and even after the passing of the “short agenda on crime” convictions increased, but the average length for convictions in cases of crimes against property and injuries decreased. In Chile, intra-field concerns about productivity prevailed; in Argentina, extra-field concerns for vengeance and
heightened retribution prevailed. The Argentine federal system concentrates on violent crimes against property. These increased their proportion among convictions from 54% in 1982, to 66% in 1996, to 75% in 2000 to over 81% in 2006 (SNEEP:2007).

Figure 5-18 Prison terms convictions in the Federal Justice of Buenos Aires City (1982-2006)

![Graph showing prison terms convictions in the Federal Justice of Buenos Aires City (1982-2006)](image)

Source: Own elaboration based on Cosacov (1988) and National Reoffending Registry of Argentina.

This punitive turn has produced an increase in prison population since 2000, as we saw in the last chapter. In the Argentine federal prison system, the population went from 6,000 in 1996 and 6,500 in 1999 to 9,500 in 2010, with levels of pretrial detainees remaining steady at around 50%. This enormous proportion of prisoners on remand limits the possibilities for rehabilitation work.

The Argentine federal prison system is, as I explained in the last chapter, concentrated mainly on security. This security orientation is accompanied by abuses and torture by guards. At the same time, these prisons remain highly violent. The rate of voluntary manslaughter in the federal prisons was 150 per 100,000 (1.5 per 1,000) in 2003, while in the city of Buenos Aires for the same period it was 7.52 per 100,000 (CELS 2005:45). The Argentine federal prisons house a population similar to that in Chile—young, single, urban, unemployed males—but with a greater number of immigrants from neighboring countries. In 2007, 60% of inmates were under the age of 34, 75% were single, 78% were high-school dropouts, 48% were unemployed at the moment of arrest, 29% had irregular jobs, and 75% came from urban locales. Of the 7,500 inmates in 2007, 17% were foreigners, many of them imprisoned for drug trafficking. Because the federal justice system is competent in drugs crimes, a third of inmates are in prison for drug cases. Nevertheless, the great majority of inmates are there for crimes against property (47%) (SNEEP 2007).

This punitive populism, deploying highly corrupt police forces, or highly militarized ones in the case of the National Constabulary, with highly inefficient courts and prosecutors and highly violent prisons, does not fare well in terms of citizen confidence. This unreformed and despotic penal organization does not provide politicians with means to “make up for the deficit of legitimacy that besets them whenever they curtail the economic support and social protections traditionally granted by Leviathan” (Wacquant 2009b: 299).
In Table 5.6, we see that confidence in the police decreased between 1995 and 2007. While the data of Table 5.6 is from a national sample, studies in the city of Buenos Aires show similar levels of lack of trust in the police and courts. In 2006 only 19% of porteños expressed “total confidence” in the police, while 64% declared that they had “no confidence” in courts and 57% considered courts to be “very corrupt” (Míguez and Isla 2010:116).

Table 5.6 Levels of citizens trust in police and courts in Argentina (1995-2005)

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<tr>
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<tr>
<td>Trusts Police</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A lot/Some</td>
<td>35.3</td>
<td>25.5</td>
<td>33.5</td>
</tr>
<tr>
<td>Little/None</td>
<td>63.7</td>
<td>74.6</td>
<td>66.4</td>
</tr>
<tr>
<td>Trust in Courts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A lot /Some</td>
<td>35</td>
<td>16</td>
<td>23</td>
</tr>
<tr>
<td>Little None</td>
<td>65</td>
<td>83</td>
<td>77</td>
</tr>
<tr>
<td>Trust in the</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>administration</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>A lot /Some</td>
<td>27</td>
<td>ND</td>
<td>31</td>
</tr>
<tr>
<td>Little /None</td>
<td>73</td>
<td>ND</td>
<td>66</td>
</tr>
</tbody>
</table>

Source: Latinobarometro.

Citizens still have more confidence in the police than in courts, trusting the police more than other public authorities. Still, the police are trusted much less in Argentina than in Chile, where almost 70% of the population declared that it trusts the police a lot or very much. In 2010, 41% of those interviewed in Argentina thought that the main problem the police faces to fight delinquency was corruption, while 19% felt it was bad training and only 14% thought it was a lack of resources.

5.3. Conclusion: A judicialized and modernized penal field in Chile and a fractured re-traditionalized penal arena in Argentina

The struggles in each penal sub-field after the closing of dictatorship and during the return to democracy led to different penal bureaucracies, but also to different articulations and relations among them, complete with distinct symbolic regimes across the penal field, divergent modalities of operation, and with different degrees of legitimacy (popular approval) of the penal sectors of the state. In Chile, the panoptic police and fast-track criminal justice have delivered massively increased numbers of short-term sentences and a booming prison. The expanded prison and parole system constitute a panoptic and punitive penal matrix where top bureaucrats have a shared orientation toward citizen safety, public accountability, and efficiency, all within a logic of service provision. This penal state intervenes in social space through all fronts—police, courts, prison, and community supervision—with an unusual intensity for the region, and not “mainly through the police and prisons” as Müller (2011a) argues in his characterization of the Latin American penal state. The Chilean penal system also challenges the typical portrayal of the neoliberal penal system as increasingly informal,
atomized, and subject to a punitivist populist logic (Chevigny 2003; Iturralde Sanchez 2010a; Muller 2011a). In this penal field, judicial authorities, especially prosecutors, have acquired more power, and technocratic punitivism trumps penal populist policy-making. Here the experts who participated in reforming each sector subsequently acquired a share of penal policymaking beyond their initial sectors, rationalizing and integrating the different (sub)fields under a more or less unified and coherent set of policies within grand “national security programs.” These programs were initiated in 2004 and have been implemented continually for a decade with the same contents, rationales and targets. Finally, after the implementation of these different reforms, and contrary to what has happened in Argentina, where the expansion of punishment has eroded citizens’ confidence in the state, the renewed penal branch of the Chilean state has bolstered the legitimacy of government. In Chile, the penal net has expanded but it has also gained in popular support.

In Argentina, where the same policy reforms where initially attempted the federal penal field evolved in a different direction. The failed reforms in the police have allowed despotic, highly lethal policing practices to continue, particularly those performed by the traditional “civilian” federal police. The federal police forces feeds a court system that is highly atomized and inefficient, but that nonetheless has become more punitive in the few cases it sentences while still producing a carceral population bloated by a majority of pre-trial detainees. In the federal penal system, the process itself is still the punishment for the majority of inmates, to recall the title of Feeley’s book (Feeley 1979). As the democratic game got consolidated, penal reforms remained highly incomplete or were blocked, so that penal experts were unable to secure a share in penal policy production at the federal level, in particular after the close of the 1990s.

Although both countries have experienced the advance and implementation of the neoliberal program in the economy, the evolution of the penal sectors in each country cannot be explained solely by referring to “the expansion and exaltation of the penal branch of the state” (Wacquant 2008) under neoliberalism in general, or by pointing to the historical informality and illegality of the state in Latin America (Muller 2011b). The specific structures of the penal subfields and the struggles within them after the transition to democracy produced very different penal fields.

The distinctive evolution of the penal state in Chile after the transition to democracy contradicts Iturralde’s thesis that contemporary “Latin American legal fields still present at least two established features: instrumental inefficacy and authoritarianism” defined by the author as “a weak penetration of the law in Latin America” and “a permanent use of state force through illegal mechanisms” (Iturralde 2010a, 5). That is certainly not the case in Chile. First, together the police, courts and prison deeply penetrate contemporary Chilean society, both in practice and in the popular imagination. Second, legal mechanisms explicitly guide that penetration—although less so within prisons. These new expansive controls produced by legal means do not continue a history of traditional legality of penal bureaucracies and strong judiciaries in Chile. As we saw, the judiciary in Chile was weak from the early 1930s till the 2000s, and the police operated without practical judicial control between 1973 and 1989 during the dictatorship.

Argentina’s penal system is more authoritarian than Chile’s, with greater use of state force by illegal means. But, even in Argentina, killing squads, paramilitaries, and
para-police organizations have not taken hold, as Muller (2011) predicts of Latin American penal state under neoliberalism. At the same time, the discourse of due process and civil rights is still central in all Argentine subfields: among human-rights groups within the policing sector, in the pro-due process fractions within crime courts, and in the office of the Prison Ombudsman, as well as among human-rights activist groups like CELS or CORREPI, which have begun putting limits to despotic policing and imprisonment around the same period in which neoliberalism was fully implemented during Menem’s presidency. The penal systems of Argentina and Chile, in turn, are very different from the those in Colombia (Iturralde Sanchez 2010a), Mexico, or even Brazil to which the thesis of instrumental inefficacy, contemporary authoritarianism, and privatization and delegation to private or irregular organizations can be applied more accurately.

We can conclude from this chapter that the general thesis about institutional convergence in Late modernity penalty that Iturralde (2012) advances and that of continuity of a chronically feeble and informal penal state in Latin America under neoliberal regimes (Muller 2011b) must be revised. More importantly, the divergent evolution of the penal field in Argentina and Chile, cannot be explained simply by pointing to socioeconomic or cultural transformations under neoliberalism or under the transition to Late modernity, as most authors studying the evolution of the penal systems in Latin America argue (Iturralde Sanchez 2010b; Muller 2011a). The field theoretical analysis provides instead an alternative and adequate explanation for such divergent changes. The detailed reconstruction and analysis of the struggles over the transformation of those penal bureaucracies, which took place in structurally and historically specific subfields has been essential to understand the new shapes, workings and effects of the democratic penal Leviathan in these two countries. I turn now to consider the theoretical implications of these findings for the study penal change and bureaucratic state transformation.
Chapter 6
The evolution of post-authoritarian penal states in Argentina and Chile: Empirical and theoretical contributions

This study has explained how and why the Argentine and Chilean penal bureaucracies have changed their organization, goals and practices since the return to democracy in 1983 and 1990 respectively. It has accounted for the specific contents of the reforms programs for the police, criminal courts and prison bureaucracies and their differential incorporation in those bureaucracies. It also explained why the post-authoritarian state penal sectors developed such different structures and symbolic orders in each country, even after both societies underwent military rule and experienced similar programs of reform in the police, courts and prison. Accounting for differential bureaucratic change, driven by the retreat of the military from the political and penal fields (subfields), and the struggles that followed to redefine the role and functioning of penal bureaucracies, involving experts, bureaucracies (with different degrees of power) and political agents (operating in distinctly reconstituted party systems), has been essential to understand the different general configurations of penality in these two nations. In this conclusion, I briefly review my main findings and sketch the empirical and theoretical implications of this study.

Treating the penal chain as an articulation of three relatively autonomous entities, the police, courts, and prison, I produced a comparative field-theoretic analysis that allowed me to explain the actual contents of the reform programs, differing organization changes and structural outcomes. I broke with the commonsense view of reforms as (a) responses to problems followed by (b) the selection of a program and its implementation. Instead, I conceive of reforms as episodes in the struggles within the differently historically structured policing, judicial and carceral subfields in Bourdieu’s sense. I have built an account of penal change that traces the origins of these reform models and their impact on penal bureaucratic change, including the new penal architecture resulting from their recombination in each case.

Reform programs and policies were shaped by the strategies of experts reinvesting their professional skills — mostly derived from the legal and economic professions — and their political and social capital of relations into the policing, criminal courts and carceral fields. These experts exploited the retreat of the military from the political field and from the penal sector of the state at the end dictatorship and the advent of electoral democracy. However, the transformation of those reform programs into bureaucratic practice depended on the outcomes of a structured competition over authority over policing, criminal courts and carceral policies that involved police, courts and prison bureaucratic elites and the central government.

Through the historical reconstruction of the pre-dictatorship and dictatorship periods in Argentina (1930-1983) and Chile (1930-1990) I determined the objective relations between the executive branch, the military and each penal bureaucracy in Argentina and Chile, up to the moment of transition and traced the constitutions of subjective dispositions of elite penal bureaucrats and experts. I then analyzed how within the context of the retreat of the military from the political and the penal field after the end of dictatorship, the different structures of the policing, courts and carceral fields, and the dispositions of the bureaucrats, experts and political agents, determined the specific
position-takings, alliances and alignment of forces in the struggles for reforms which determined the different outcomes in terms of bureaucratic transformation.

Occupying progressively a dominant sector of the Argentine field of power, the military, with advances and retreats, increasingly militarized the penal field within the bureaucratic realm between the 1940s and 1980s. Later on, after a sudden implosion in the early 1980s, the military become subordinated within the field of power and retreated rapidly and massively out from the penal field. This militarization of penal bureaucracies in Argentina, resulted in penal bureaucracies highly subordinate to political and military external influences and penal bureaucrats highly docile to political interference at the moment of transition to democracy. The dispositions of bureaucratic agents to seek political allies to acquire and control power positions within the heteronomous penal bureaucracies of Argentina continued during democratic times, constantly exposing the bureaucracies to the interests of the dominant executive branch. In Chile, by contrast, the military had a more subordinated position in the field of power between 1930 and 1960 producing a limited militarization of internal order prior to the 1970s dictatorship and more solid penal bureaucracies which the military penetrated less during dictatorship. This trajectory also produced more combative bureaucrats in the Carabineros during and after dictatorship and more unified courts in Chile than in Argentina In the prisons the centralization of repression in the police and military led to prisons in Chile being less affected by military standards and priorities during dictatorship than their counterparts in Argentina. The different degrees of militarization of the penal fields and the historical relations between political agents and bureaucratic elites, determined the position-taking of police, courts and prison bureaucrats after the end of dictatorship in the face of the advance of elected political agents over those bureaucracies.

The end of dictatorship was followed by struggles between experts, penal bureaucrats and incoming elected political elites of the policing, judicial and carceral fields over redefining the functions and functioning of the penal bureaucracies. In these struggles, the elected executive branch wielded tremendous power within the policing, courts and carceral fields in Argentina and in the Chilean carceral field, to the point that docile police, court and prison elite bureaucracies did not challenge the executive branch at all. The struggles within these fields converged with the independent dynamics in the political field, and both were decisive in determining the blockage, limits or reversal of those bureaucratic reforms. In Argentina, the volatile, divided system of weak parties, along with the political dispositions of executive-branch incumbents, produced the reversal of police reform, limited the extent of courts reform promoted by legal reformers in the judicial field, and led to the final abandonment of rehabilitation and decarceration policies which have been reintroduced into the field by returning penologist and criminologists and to the turn toward incapacitation and populist punitivism policies. In Chile the limited power of the elected executive over the police and court bureaucracies at the return of democracy led the executive branch to heavily invest in reform to alter the power ratio with those bureaucracies, both to govern them and to weaken these former allies to the military in the political field during dictatorship. The struggle to gain control over those bureaucracies and demilitarize the police and reorient court to ensure due process converged with the determinants derived from the political field, where the cross-party consensus and the platform-based nature of parties produced constant pressure on the executive branch toward reform of the recalcitrant Carabineros and courts, but
discouraged rehabilitation and human-rights reform in prisons, as the political arc favored managerially rationalized, hyper-punitive courts and prosecutors.

Through the comparative field analysis I explained the paradoxically development that in both cases, only the highly autonomous bureaucracies, not controlled by the central government at the moment of transition, changed their goals, division of labor and functioning, while those controlled by the central government at the moment of transition to democracy did not. The highly autonomous Carabineros de Chile changed their target from national security to citizens’ security, incorporated managerialism, community policing and accountability practices while the highly autonomous corporatist and closed courts incorporated a new accusatorial criminal procedure dominated by proactive and independent prosecutorial administration. The less autonomous prison administration in Chile, even if it expanded, did not change in line with the new programs introduced by the new experts emphasizing rehabilitation and inmate rights. In Argentina, the three historically heteronomous police, court and prison administrations in the federal bureaucratic field of Argentina ended up not incorporating these same new models that democratic-era reformers proposed there.

The study of the evolution of the police bureaucracies, criminal courts and prosecuting, and prisons as nested within the respective policing, judicial and carceral fields allowed me, in turn, to explain the reconstitution of the penal field in the democratic era. With the return to electoral democracy, the penal fields in each society developed new objective and symbolic structures, presenting different modalities of penal policy making and material effects. In Chile, the judicial bureaucracies acquired a central role, judicializing policing and imprisonment. Within the penal field a technocratically legitimated punitivism emerged, and penalty expanded in the police, courts and prison fronts. In Argentina, the penal field evolved from a unified apparatus subordinated to the military bureaucracy into a fractured institutional constellation in democratic times, characterized by a penal populist modality of penal policy-making and centered on the despotic police and prisons that operate along punitive but inefficient courts and prosecutorial organizations. The results of this study enrich our understanding of the transformation of the penal state in Latin America. The concepts deployed helped us to better explain penal-bureaucratic change in the region by solving a number of limitations encountered in alternative theoretical perspectives.

6.1. Change and variation in contemporary Latin American penality

This study has documented the transformation of penal organizations goals and functioning emerging from the dictatorship era, and examined the specific structural and symbolic transformations of the penal fields in the last three decades. The penal bureaucracies in Argentina and Chile not only grew; they also underwent substantive changes in their goals, practices, and objective inter-relations. As such, the study enriches our knowledge of the recent transformation of the penal state in Latin America. It does this first by going beyond the observation that the Latin American penal state has expanded and intensified its activities (Godoy 2005; Iturralde Sanchez 2010, 2012; Muller 2011a, 2011b; Muñagorri Laguía and Pegoraro 2004; Sozzo 2010, 2011). These transformations observed contradict the portrayal of continuity that authors following late
modernity theory and theories of neoliberal penalty present (Muller 2011a, Iturralde Sanchez 2010 in relation to the recent evolution of the organizational parameters of penal bureaucracies in Latin America). These works on the contemporary penal state have stressed the contemporary continuity of historical inefficacy, weakness, and informality of Latin American penal organizations, while here I showed, that in the case of Chile there criminal courts have become more efficient, stronger and less informal, leading to a judicialization of the police. At the same time I have shown that each penal field has evolved in very different directions, to the point that the “emergence of penal populism, the importation of zero tolerance policies, the transnationalization of the war against drug trafficking and the militarization of justice administration”(Muller 2011a:72) that Muller presents as the Latin American path to neoliberal penalty, hardly represents what occurred in Chile, where penal populism did not emerge, zero tolerance was rejected, the war on drugs has limited decisive impact on rise in imprisonment and where the criminal justice administration has been de-militarized.

This study has also covered the pre-dictatorship era, from the 1930s to the 1970s. The literature on penal bureaucracies in Argentina and Chile gives scant coverage to this period, and even less to the police, the courts, and the prisons together. The historical analysis of the differential militarization of the penal state in Argentina and Chile between the 1930s and the 1970s, and subsequently during dictatorship, helped me explain the process observed in the democratic era. As such this study is also an analysis the militarization and de-militarization of penal arenas in Argentina and Chile, and can serve to understand the recurrent pattern of militarization and demilitarization in other Latin American cases, as are Brazil, Colombia, Peru, Uruguay, and Mexico. The analysis of militarization and demilitarization was crucial to understand not only dictatorship era penalty but democratic era penalty as well, even if the military as an organization were excluded from the penal sector of the state very soon after the end of dictatorship. The introduction of the military in the analysis was necessary not only empirically but also analytically in terms of the field perspective followed.

The comparative field study produced here has also gone beyond correlating changes in the economy (commodification) and crime, with expansive penalty, attributing the increase in imprisonment to the continuity and reinforcement of old penal institutions. Neoliberal penalty theory as applied in Latin America does this (Muller 2011). Beneath the common expansion of the penal states in Argentina and Chile, this study has uncovered a variety of institutional structures and routes toward the penalization of social marginality.

Correlations are a useful starting point, but we need to engage with actual processes and mechanisms that explain those changes. By putting the changes within each sector of the penal state in comparative and historical perspective, I have also been able to account for the specific configurations of state penalty. This is the first study that comparatively takes into account the internal and external sources of penal changes, while at the same time breaking down the “criminal justice system”—which is not a system—into its three core components, the policing, criminal courts and carceral subfields to account both for organizational mutation and for structural transformations of penalty. These are impossible to capture and account for within the theories of late modernity (Garland 2001, 2004, Iturralde 2011).
Analyzing the struggles within the penal subfields and their effects on the general architecture of the field, I have explained the transformation in Chile from a traditional front-end penalization centered on the police to a back-end penalization centered on the courts. I have also explained the resilience of the organizational structure of penalty in Argentina which has returned to a traditional front-end penalization centered on preventive police control. To understand this processes I had to trace them back to the dynamics in the subsectors and then integrate them in the analysis at the level of the structural recombination of three subfields.

This allowed me to get beneath the commonly observed path of more intense penalization in Latin America, and dissect the different relations between the political elites converted to neoliberalism and the penal bureaucracies. These different political-penal relations determined different modalities and paths of penal state building. As this study showed, it was essential to distinguish cases where penal arenas were structured almost as an apparatus, where political decisions got more easily implemented without resistance, from cases where authority over penal policies and priorities was distributed across police, judicial, prison, and military elites as well as political agents, experts, professional and journalistic agents, and even economically oriented agents within the policing, courts and carceral agents. These variations represent different paths toward neoliberal penal state making, and may help explain specific developments in Latin America and beyond.

Attention to concrete processes and struggles within national fields also allowed us to gauge the relevance of international forces that several authors (Iturralde Sanchez 2010a; Muller 2011a; Rodriguez 2001; Wacquant 2009a) argue are critical to understand penal change in Latin America. This study showed that its necessary to relativize the central narrative account of organizational change that followers of neoliberal penality theory espouse (Muller 2011a) regarding Latin American cases, as derived from the importation of US models or problematics, like the war on drugs or zero tolerance policing. This was not the case in Argentina and Chile, where penal transformations occurred without any actual influence from the United States on penal models in the police and the courts. This fact does not call into question the efficacy of diffusion in other cases, such as Mexico or Brazil, but it does suggest the need to develop an analysis of regional differences in the degrees of internationalization of the national penal fields and subfields and their relevance at the moment of explaining the evolution of the penal arenas.

At the same time, the transformation in both Argentina and Chile is still consistent with Wacquant’s thesis about neoliberal penalty as a process of market-conforming state-crafting (Wacquant 2009b, 2013b). This has been particularly evident in Chile, where the neoliberal program was implemented in almost pure form. In the economic, welfare, and cultural fronts, the neoliberal transformation of the state also included penal state-making very early on. As shown in chapters Three and Four, efforts to expand the courts and the prison began at the same time that neoliberal economists were liberalizing the economy, labor relations, education, health services, and pensions. Neoliberal penal state-making in Chile responded to parallel and relatively independent institutional developments that occurred in the United States, the United Kingdom, and Chile in the early 1980s.
6.2. Field theory and penal change

This study has not only documented and explained the evolution of penal bureaucracies, but has showed that by deploying a field theory analysis we were able to fill heuristic gaps in late modernity theory and Foucauldian approaches as applied to the explanation of change in the penal state in Latin America, and beyond.

The analysis I produced divided the criminal justice domain into its three core institutional components, the policing field, courts field, carceral field. By determining the objective structure of those sectors, their concrete stakes and the types of capital effective in them, as well as the dispositions of agents in those different hierarchical positions I could account for the emergence of reform, the different bureaucratic evolutions, and the reconstitution of the penal field. Instead of conceiving institutional change as a product of “problem solving actions” of agents operating with “rationality-within-limits” (Garland 2004:172), oriented primarily “to the predicament created by high crime, low state capacity and political vulnerability” (Garland 2004:171), my analysis in terms of policing, criminal court and carceral fields, accounted for the actions of agents putting them in relation to penal field-specific interests, positions and trajectories. Within this theoretical perspective “predicaments” of penal bureaucracies correspond, to the problematizations that derive from struggles and fights within the bureaucratic and political fields—and not from any objective extra-field standards, like “high crime.”

The analysis of the historical constitution of the dispositions of penal agents and of the position of each bureaucratic agency within the hierarchy of penal bureaucracies, was essential to understand why different bureaucracies react differently in the face of the same “problems,” why for example, the dominant force within the space of police forces in Chile, the Carabineros rejected police reform attempts while the dominated Investigative Police fully embraced them without any objection. It is difficult to produce such account in terms of a response according to his underlying model of action of “rationality-within-limits” (Garland 2004:172). Instead, the different reaction of the Carabineros and the Investigative Police can be accounted for as soon as we connect their position takings with their objective relations of competition in the space of police forces within the policing field and their different positions in relation to the executive branch, as well as the different dispositions that the police elite of each force expressed in the face of the advance of the central government. In the same way, we can only understand why the criminal courts presented no resistance to reform in Argentina while they did in Chile.

Moreover, the analysis of the strategies and position-taking of agents in the policing field, courts field, and carceral field have also allowed me to analyze the concrete processes that cause changes in criminal-justice organizations instead of merely concentrating in the outcomes as Garland and his followers do. By reconstructing the specific structure and dynamics of each penal subfield—differently militarized and affected by different party systems in the democratic era—I could explain the very different evolution of the police and courts in Argentina and Chile and the similar outcomes we observe in the carceral fields—and all within the similar “late modern” societal, criminal, and ideological contexts of democratic Argentina and Chile.
Field analysis has also made it possible to overcome a core limitation of the Foucauldian approach: it has allowed me to account for the different impact of identical rationalities of neoliberalism, identical legal conceptions, and even the same technologies of power — such as managerialism — in Argentina and Chile. Foucauldian approaches to the effects of models and rationalities on penal bureaucracies sometimes suffer from an abstract narrative of impersonal formation of power-knowledge, of strategies without strategists, and vague reference to political contestation (O’Malley 1997, 2002). By contrast, field analysis accounts for the implementation and effects of models and rationalities on penal bureaucracies. It traces the actual emergence and organizational incorporation of those discourses back to structural and dispositional forces operating in reform struggles. My zooming into the different structures of interests and positions that favor or question certain discourses I could account for the different evolutionary paths taken by the police, courts and prison in Argentina and Chile, even they initially shared the same “authoritarian and liberal rationalities in the police,” and a “mixed economy of punishment in the prisons” (Sozzo 2008b, 2010).

Finally, by incorporating agency, power-interests, and strategy into the study of institutional change, I have sought to address the heuristic voids left by historical institutionalism in explaining organizational change (Clemens and Cook 1999). A historical-institutionalist account might have focused on the impact of external change, referring to ideas as impersonal, self-propelling mechanisms of change. In the field perspective followed here, institutional structures condition action, but action in fields is not limited to reproducing institutional structures, in particular in moments of crisis. Here I tracked how the action and interests of agents operating in differently configured fields modified those institutional arrangements. In the case of the courts in Chile, the courts expanded and were reinforced. This historically novel outcome resulted from the interests of political agents in democratic times to overhaul the weak but resistant courts controlled by the Supreme Courts. The different subsectors of the penal state presented different levels of autonomy from political agents, but these differences operated as conditions and assets for the agents from the bureaucratic, political and academic agencies struggling over the authority over penal policies.

To close: I have deployed the concepts of penal field, policing field, courts field, and carceral field to produce an account of penal bureaucratic change, drawing mechanisms from Bourdieusian social theory, that is, by paying attention to the structural location of agents and institutions in a space of forces and struggles on the one side, and to the trajectories and dispositions of those same agents and organizations. It remains now to extrapolate the processes and mechanisms observed in these cases to others, showing how those mechanisms converge and interact in other national or historical contexts and with what effects. Such efforts will help us further elucidate the structure, workings, and effects of the contemporary penal Leviathans of Latin America and beyond.
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