

Decolonizing Criminology and Its Relevance to Understand the Birth of the Prison in Latin America.

Author : Elena Larrauri

Date : December 2, 2021

Libardo José Ariza and Fernando León Tamayo Arboleda, [*El cuerpo de los condenados. Cárcel y violencia en América Latina \(The Body of the Convicted. Prisons and Violence in Latin America\)*](#), 73 *Revista de Estudios Sociales* 83 (2020).

In criminology we are used to reading brief and ‘filtered versions’ of the history of the prison. Despite recent works that provide useful summaries (Rubin, 2019),¹ our main knowledge about the emergence of the prison still comes foremost from the liberal or ‘Whig’ histories or from revisionist accounts (represented by Rothman, Foucault, and in a distant third place on the podium Spierenburg, Rusche and Kirkheimer, Ignatieff, and Melossi and Pavarini). The liberal version asserts that the emergence of the prison was the product of the ‘Enlightenment’ in the eighteenth century, and that this new form of punishment was a progressive triumph of humanitarian ideals which opposed corporal punishments and public executions. The revisionist version questions this benevolent explanation and, in the most influential Foucauldian version, declares that prison is also a cruel but ‘hidden’ punishment addressed to the soul (instead of the body), with the goal of disciplining and creating ‘docile bodies’, and destined not to punish less but better. Both the liberal and the revisionist versions have also been subject to criticism. Ariza and Tamayo’s paper *El cuerpo de los condenados. Cárcel y Violencia en America Latina* (The Body of the Convicted. Prisons and Violence in Latin America) provides a good example why both accounts need to be reconsidered.

As so often happens in criminology, and in general in the social sciences, our accounts derive mainly from the countries that produce them, the US, and the UK. In the social sciences, this generally means that even in Spain we explain the history of prison comparing ‘the system of Auburn and Philadelphia’. This is logical, to a certain extent, because the main scholarship has been developed there. However, this sometimes misleads us because the chronology of the birth of the prison, its principal ideas and influences, and also finally the main actors might obviously be more diverse in different countries. In her fascinating paper Mary Gibson (2011) summarizes the birth of the prison in three other continents to explain that not all countries followed the sources or tempos of the birth of the penitentiary. There are countries where the emergence of the prison ‘was introduced by a colonial government (Vietnam, Africa), by indigenous rulers under imperialist pressure from Western powers (China, Japan), or by postcolonial leaders (Peru).’² This literature produced from the margins allows us to capture new elements surrounding the origin of the prison institution, like racism, European imperialism, the brutal pre-modern conditions of the prison, and the substitution of less violent punishments existing in these societies before the prison, composing a more complete picture of the birth of the prison.

The paper by Ariza and Tamayo therefore helps with ‘decolonizing the birth of the prison’. Following the lead of other South American historians like Aguirre (2009),³ we can learn how in Latin America the prison did not play such a central role in the 1800s because of the existence of other form of punishments, such as conscription into the army or the big proprietaries, that served to maintain and reproduce the existing social order. Since the prison was not central, and the state was weak and poor, the conditions of this new institution were brutish (but also paradoxically less ‘disciplinarian’, allowing at least some prisoners a greater degree of autonomy), far from that proclaimed by the reformers and proponents of ‘the well-ordered prison.’⁴

The inhumane conditions of existence inside Latin American prisons are what form the main thesis of Ariza and Tamayo’s paper. They question if the shift in punishment ‘from the body to the soul’ and the demise of corporal punishments that is represented by the emergence of the prison really took place in Latin America. Their paper on

Colombian prisons provides a vivid description that allows this account to be questioned. In the prisons in Colombia the situation is so deplorable and violent, that it is certainly not only the 'soul' that is being punished but the body of the convicted. Inside Latin American prisons the risk of contagion from HIV and hepatitis, sexual assaults, not having access to physical space, natural light, or water, all affect the right to life and health. Therefore, the explanation so favoured by the liberal version of prison as a punishment that 'deprives of rights' also comes into question, since the punishment impinges on the bodies of the convicted. In sum, 'Corporal violence is a central part of the imprisonment experience in Latin America.' (P. 89.)

A final reason why readers might find this paper interesting is its focus on prison reform, and the role played by the courts. All countries have to a certain extent tried to mobilize the law and the courts to produce some improvement in prison conditions and prisoners' rights. And scholars have soon realized that the law does not seem to affect the profound forces that shape prison life; beneath prisoners' rights, prison life continues to be quite immune to reform. Finally, criminologists have also noted that most of the prison reforms can only guarantee procedural rights, protections on how decisions are taken which might legitimize this discretionary and sometimes arbitrary power, making it appear as if it is subjected to the rule of law, whilst still being outside the imperium of the law.

The authors provide one example of the intervention of the Constitutional Court in Colombia. Prisoners trust or rely on the possibility of judicial reform, and the Constitutional Court has provided judgments declaring unconstitutional the prison situation and arguing for basic humane living conditions. However, the sad conclusion is that these judgments cannot, and have not, altered prison life. Therefore, finally, the authors reflect upon whether this discourse of hope in judicial reform might deflect from other forms of resistance. The intervention of the courts persists on the discourse of rights, appearing to limit the right to punishment and thus 'legitimizing' the prison, while at the same time being incapable of altering the conditions that punish bodies.

1. Ashley Rubin, [Early US Prison History Beyond Rothman: Revisiting The Discovery of the Asylum](#), 15 **Ann. Rev. of L. & Soc. Sci.** 137 (2019).
2. Mary Gibson, [Global Perspectives on the Birth of the Prison](#), 116 **Am. Hist. Rev.** 1040, 1051 (2011).
3. Carlos Aguirre, [Cárcel y Sociedades en América Latina: 1800-1940](#), in 209 **Historia social urbana. Espacios y flujos** (Eduardo Kingman Garcés ed., 2009).
4. Randall McGowen, *The Well Ordered Prison: England, 1780-1865*, in **The Oxford History of The Prison** (Norval Morris & David J. Rothamn eds., 1995), available at [WorldCat](#).

Cite as: Elena Larrauri, *Decolonizing Criminology and Its Relevance to Understand the Birth of the Prison in Latin America.*, JOTWELL (December 2, 2021) (reviewing Libardo José Ariza and Fernando León Tamayo Arboleda, *El cuerpo de los condenados. Cárcel y violencia en América Latina (The Body of the Convicted. Prisons and Violence in Latin America)*, 73 **Revista de Estudios Sociales** 83 (2020)), <https://crim.jotwell.com/decolonizing-criminology-and-its-relevance-to-understand-the-birth-of-the-prison-in-latin-america/>.