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# “A GRANDES CAUTELAS, OTRAS MAYORES”: IMPORTING NEOLIBERAL CRIMINAL JUSTICE POLICIES AND PRACTICES INTO CHILE

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## ABSTRACT

During and since the Pinochet dictatorship, Chile has entertained and implemented new criminal justice policies and practices. Many of these ideas originated in the United States, and are tied to neoliberal initiatives. Advocates of these new initiatives, both inside and outside Chile, equate them to panaceas, and solely and/or disproportionately emphasise the benefits that can be achieved by implementing these policies and practices, while neglecting their downsides, particularly the growing empirical evidence which calls into question some of these developments. This article documents Chile's experience with the new neoliberal criminal justice initiatives that have been considered, where they have gained traction, which constituencies championed their merits, and which policies and practices were eventually chosen and implemented. This case study concludes with a series of hypotheses amenable for testing.

## ARTICLE HISTORY

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## Keywords

Chile; Post Pinochet Chile; Neoliberal criminal justice policies and practices; criminal justice policy transfer; criminal justice policy adoption

## I. Introduction

Neoliberal policies and practices have their origins in the economic sphere<sup>1</sup> (Cahill & Konings, 2017), but have found willing partners across almost all policy domains. These initiatives are frequently perceived to be undemocratic because they are proposed by elites, implemented in whole or in part by private entities, criticised because of the damage they can do, and less accountable in the manner in which they are implemented.<sup>2</sup> Among the numerous neoliberal policies and practices that have been considered and implemented are ones that affect a country's criminal justice system.<sup>3</sup>

The reform of criminal justice systems is a continuous and often contentious process. Some of the new initiatives have been based on empirical research, whereas others have mainly been a response to exigent political demands by various real and imagined pressures. In the United States, for example, since the 1970s, a get-tough approach to crime and criminals has been pursued (e.g., Murakawa, 2014). This has included harsher sentencing, the building and managing of new types of prisons (i.e. high-security/supermax correctional facilities), the introduction of boot camps, zero-tolerance policing, CompStat, police body cameras, electronic monitoring, and the selective use of privatisation in criminal justice agencies.

Many advanced industrialised countries have selectively adopted one or more of these policies and practices (e.g., Godoy, 2005; Ross, 2013). Consequently, some scholars have noted how the punitive turn in many countries' criminal justice systems (Pratt et al., 2005) has facilitated these changes. Others (e.g., Hallsworth, 2000) have questioned the empirical reality of this depiction and

the ability to identify specific markers that succinctly posit a punitive turn. In general, these changes have been referred to as neoliberal in nature. Moreover, some scholars (e.g., Iturralde, 2010; Sozzo, 2016) connect weak citizenship rights with increased punitiveness in Latin America. In the context of neoliberal political and economic systems, citizenship rights become weaker in terms of social rights, but economic and private property ones are strengthened. At the same time, in order to “face” the social exclusions produced by these “thin” democracies, Latin American States have increased punitiveness.

Regardless, some countries have been more sceptical and selective than others in their implementation of neoliberal criminal justice policies and practices utilised abroad. The majority of scholarship examining the adoption of these initiatives has focused on the neoliberal countries of Australia, Canada, Great Britain, New Zealand, and South Africa (Van Zyl Smit & van der Spuy, 2004). Jones and Newburn (2005, 2007), for example, examined how transnational policy networks enabled the transfer of American criminal justice policies and practices to the UK. The policy networks included members of the Democratic Party in the US and the Labour Party in the UK. Also important was the role of think tanks, such as the Adam Smith Institute in the UK and the Heritage Foundation in the US. Jones and Newburn note, however, that not all policies were amenable for transfer. Martin (2017), on the other hand, examined the incorporation of “three strikes, you’re out” sentencing, the building and use of supermax prisons, and zero tolerance and broken windows policing in New Zealand. Again, like Jones and Newburn observe, there was opportunity for unique alterations and/or configurations of these policies and practices in the New Zealand context. However, Martin warns: “There is a danger that examining the American influence on New Zealand criminal justice overstates the impact and creates an impression of wholesale takeover. Even in the case of three strikes, where the movement of policy may seem quite direct, the assemblage established in New Zealand is a hybrid shaped not only by global forces but by local opposition and invention (the provision for judicial discretion, for example)” (p. 12).<sup>4</sup>

The process of adopting and implementing neoliberal criminal justice policies and practices is less understood in the emerging democracies, such as those in Latin America. Needless to say, there is a growing scholarship on this issue in this region (e.g., Iturralde, 2018). A handful of scholars have examined the importation of western (in particular, from the US) criminal justice policies and practices into Latin America. Sozzo (2002) argues that criminal policies in Latin America were imported from Europe and the US, resulting from the economic dependence of Latin America on the geopolitical North. In a similar manner Wacquant (2003, 2008), for example, castigates the Brazilian government for implementing the flawed zero-tolerance policing model that was used in New York City under William Bratton’s tenure as Police Commissioner.<sup>5</sup>

Moreover, Wacquant (2003, 2004) argues that this process has occurred with the assistance of individuals with quasi-academic credentials, supported by right-wing think tanks, not only in the US, but elsewhere as well. Hathazy (2013a) closely examines recent criminal justice policies and practices in Argentina, Chile, and Peru. In so doing, he outlines some of the differences “in the penal and welfare neoliberal state in Latin America and in how neoliberal penal and welfare policies are shaped by local political processes that differ enormously from those in the global north and that give specific declinations to different neoliberal penal and welfare states in Latin America” (p. 20). More specifically, he zeroes in on “the causal relevance of the regime that governs the transition, party ideas, and most important, party organization and the target and strength of urban poor mobilization” (p. 20). Although Hathazy’s discussion is important, his analysis only focuses on three states, and consequently does not go into great depth with each particular one.<sup>6</sup>

One country that is missing from this body of research and is ripe for this type of analysis is Chile. Over the past 43 years, this country has had a rather unique history with the adoption of neoliberal policies and practices. The neoliberal economic model was imposed during Pinochet’s dictatorship (1973–1989) (Silva, 1991; Llanos Reyes, 2014), and has continued in one shape or form since then, expanding beyond the economic policy sector. Moreover, these initiatives have been developed by governments supported by opposing party coalitions (Ross & Barraza Uribe, 2019),

and do not appear related to social mobilisations beyond political campaigns that use citizen fear of increasing crime to support their political agendas. Moreover, Chile is often used as an example for the examination of security policies in Latin America. Some would also argue that the disturbances which occurred in the fall of 2019 were a result of the realisation of the neoliberal state.

Chile has one of the healthiest economies in South America (Bosworth, Dornbusch, & Labán, 1994; Lagos et al., 2012), and it is currently experimenting with new kinds of policies and practices (mainly imported from the US and the UK) in both the criminal justice, and the health and education spheres. The country wants to show its citizens and the rest of the world that it is a progressive democracy and that it has sufficiently distanced itself from the legacy of the Pinochet dictatorship. To do this, successive governments slowly attempted to revise Chile's constitution and criminal justice system, so they could promote and protect the tenets and practices of civil and human rights (Hagopian, 2005, 2006; Lagos et al., 2012).<sup>7</sup> This was being done at the same time that increases in crime and fear of crime in Latin American countries were being noted, not just by criminal justice practitioners, but also by the news media and public alike (Bailey & Dammert, 2005; Godoy, 2005; Dammert, 2006; Dammert & Malone, 2006).

The political proponents of many of these reforms remain fundamentally attached to the tenets of neoliberal ideology. In the Chilean context, this is perhaps ironic given that the much-maligned Pinochet was actually one of the first world leaders to openly embrace neoliberalism and extoll its virtues (see, e.g., Taylor, 2006). Today, the country's right-wing political parties remain highly neoliberal in terms of economic ideas, but highly conservative in terms of social ideas. Although Nueva Mayoría (former Concertación, a centre-left party coalition) was less neoliberal in terms of its rhetoric, in practice it kept mostly intact the neoliberal economic measures implemented during Pinochet's dictatorship. One example of neoliberal policies implemented in Chile is the pension system that is still in place today.<sup>8</sup> Also, many essential services, like electricity and water, were privatised during this time and remain so to this date. At the same time, political coalitions are more diverse in terms of social ideas, including parties such as the Christian Democratic Party, the Socialist Party, the Party for Democracy, the Communist Party, the Left Citizenship Party of Chile, and the Broad Social Movement (Olavarría, 2003; Biblioteca del Congreso Nacional de Chile, n.d.a).

In sum, this article is an attempt to examine the neoliberal criminal justice policies and practices in contemporary Chile and the related processes of identification, deliberation and implementation. This study documents Chile's experience with the new initiatives that have been considered, where they have gained traction, which constituencies championed their merits, and which initiatives were eventually chosen and implemented. In conclusion, this case study will present a series of hypotheses amenable for testing, arguing that *the reasons for and responses to the implementation of neoliberal policies and practices in Chile's criminal justice system are more nuanced than some casual observers may assume.*<sup>9</sup>

## II. Methodology

To better understand the decisions connected with the new policies and practices considered and implemented in Chile, publicly available documents, such as scholarly research, government reports, analyses produced by civil society organisations, and news media articles that mention the new criminal justice initiatives in Chile, were reviewed and analyzed.

Throughout this research, the investigators identified policy transfers directly imported from the US, particularly related with a get-tough approach. In addition to this traditional kind of research method, the investigators have been informed by their former roles as criminal justice practitioners, and by previous scholarly and field research on criminal justice practices in Chile and other South American countries. These experiences contribute to the development of this article in situating knowledge in terms of the workings of the prison system, and Chilean society and culture (Haraway, 2004). In general, this is a case study research design and, in the end, will lead to hypothesis creation. In other words, through the integration and analysis of publicly available

documents and the investigators' previous experiences, this identification of policy transfers will go further than a simple factual account, by providing interpretation in the particular context of the Chilean and South American criminal justice systems.

### **III. Review of Chilean initiatives since the fall of the dictatorship for implementing foreign-based neoliberal criminal justice policies and practices**

During and since the Pinochet dictatorship, a number of initiatives in the field of criminal justice were proposed, some of which were implemented. Although previous reviews of criminal justice reform in Chile have been conducted (e.g., Blanco et al., 2006; Carey, 2006), they tend to focus on changes in the methods utilised in judicial practices, especially criminal procedure. Rarely are analyses done of criminal justice policies and practices. The following section attempts to understand the changes that were borrowed from abroad that can be considered neoliberal in origin (e.g., O'Malley, 2016). In an attempt to understand this process, the constituencies that advocated these changes, the origins of these policies/practices, and the specific methods by which these changes were articulated are reviewed. It must also be understood that for policy transfer or convergence to occur, the so-called foreign expert does not need to travel to the host country for their neoliberal ideas to resonate. Criminal justice bureaucrats or leaders in the host country (i.e., Chile) can learn about the new (neoliberal) approaches or be exposed to and/or be influenced by the experts' body of work by simply reading it, and/or via foreign travel and study.<sup>10</sup>

#### ***The political actors***

Both during and after the coup, numerous political actors vied for power. Inside Chile, one of the most dominant was a clique of US-educated individuals commonly referred to as the "Chicago Boys". These people (i.e., Jorge Cauas, Miguel Kast, José Piñera, and Emilio Sanfuentes) were trained at the University of Chicago, and were well steeped in the free market economic principles of Milton Friedman who taught there (Silva, 1991). The policies and practices advocated by the Chicago Boys were then promoted by right-wing think tanks, such as Libertad y Desarrollo and Fundación Paz Ciudadana.<sup>11</sup> This transfer was most noticeably reflected in measures to relieve overcrowding in the jails and prisons (Ross & Barraza Uribe, 2019). Other actors included former presidents such as Michelle Bachelet and Sebastián Piñera during his first term.<sup>12</sup> Outside of Chile, the most prominent actors tied to the implementation of neoliberal policies and practices in the criminal justice field included previously mentioned William Bratton, now working as a private consultant, and the Inter-American Bank of Development.

#### ***Neoliberal reforms introduced in the various branches of the criminal justice system***<sup>13</sup>

During the 1990s, due to the massive governmental spending incurred during the post-war era and the pressure of neoliberal globalisation, many countries decided to slowly reduce their governments' role in the provision of social services and increasingly turned these over to the private sector (Harvey, 2005/2007). Privatising formerly government-run entities and lifting price controls, in the hope of stimulating the economy, accompanied this. Although scholars like Wacquant (2003, 2004, 2008), Jones and Newburn (2007), and Müller (2012a, 2012b) have looked at specific policies and practices in the field of criminal justice, the balance of this article examines the reforms organised based on the traditional major divisions of the criminal justice system in Chile.

1. Structural reforms of the criminal prosecution system and subsequent reforms to law enforcement practices

i. Reform of the criminal prosecution system: *Reforma Procesal Penal*

Between 2000 and 2005, Chile implemented a reform of its criminal prosecution system, known as the "Reforma Procesal Penal". This process aimed at modernising the system and reducing the

workloads of the overcrowded courts, thus accelerating the criminal procedure processes. The reform replaced the traditional inquisitorial system with an adversarial one.<sup>14</sup> This change was implemented not only to relieve the jammed system, but also to reduce the high rates of pre-trial detention. With the implementation of the reform, the number of pre-trial imprisonments decreased from 48.5% of total detentions in 2000 to 24.0% in 2007 (Duce & Riego, 2009, p. 178). In addition, the length of trials was shortened, resulting in an acceleration of judicial outcomes, which affected the number of people receiving sentences and increased the number of imprisonments. One indicator of this trend is the number of incarcerations per 100,000 people, which was 220 in the year 2000 and 318 in 2009 (Consejo para la reforma penitenciaria, 2010, p. 22; Morales et al., 2012, p. 6).

- (ii) Reforms as a response to overcrowding in prisons: the introduction of therapeutic justice and new technologies

### **1. Introduction of *Tribunales de Tratamiento de Drogas y/o Alcohol* (Drug Courts)**

In the context of the reform to the criminal prosecution system (Reforma Procesal Penal), the first Drug Court trial programme – or *Tribunales de Tratamiento de Drogas y/o Alcohol* (TTD) – was implemented in the city of Valparaíso (5<sup>th</sup> Region) (Contreras Olivares et al. n.a.). This was inspired by the US experience and was promoted by the United Nations Office on Drugs and Crime (UNODC). The US programme originated in 1989 in Florida under State Attorney Janet Reno, and was expanded when she was made US Attorney General (1989–2001). During the Clinton Administration (1993–2001), a number of evaluations suggested that this type of programme provided a number of benefits (Mitchell et al., 2012).

In 2012, after a pilot programme in Valparaíso, the Tribunal de Tratamiento de Drogas was formally initiated through a partnership between the *Servicio Nacional para la Prevención y Rehabilitación del Consumo de Drogas y Alcohol*, SENDA (National Service for the Prevention and Rehabilitation of the Drug and Alcohol Consumption), and the Ministerio Público (Public Ministry or Prosecution Bureau). It was also coordinated and supervised by the Ministry of Justice and Human Rights, the Public Defence Bureau, the think tank Fundación Paz Ciudadana, the Gendarmerie (the National Prisons Service), and the National Service for Minors (SENAME) (*Tribunales de Tratamiento de Drogas y/o Alcohol* (TTD), 2016).

This approach utilises a drug treatment programme as a conditional trial suspension (“suspensión condicional del procedimiento”) for first-time offenders who would receive sentences of less than 3 years in duration (*Servicio Nacional para la Prevención y Rehabilitación del Consumo de Drogas y Alcohol* SENDA, n.a.). The programme operates through the coordinated efforts of a judge, a prosecutor, a defence attorney, a psychiatrist or psychologist, and a social worker. As of 2016, the TTD functioned in 10 regions of Chile and 29 courts (*Tribunales de Tratamiento de Drogas y/o Alcohol* (TTD), 2016). In terms of achievements, by 2016 recidivism was reduced by 89% for people who had enrolled in the programme since the year 2014 (*Tribunales de Tratamiento de Drogas y/o Alcohol* (TTD), 2016, p. 1). However, there are no further measurements of the achievements of this programme since it is not widely used, which has been one of its main challenges to date (*Tribunales de Tratamiento de Drogas y/o Alcohol* (TTD), 2016; Contreras Olivares, et al., n.a.), even though, according to claims made by the Government, by 2018 the programme became available for minors, adding 21 new courts to its jurisdiction (Corte Suprema, 2018, p. 39).

### **2. Introduction of electronic monitoring**

In 2008, President Bachelet,<sup>15</sup> in accordance with her goal to “modernise the justice system” (Biblioteca del Congreso Nacional, n.d.a.), sent a bill to Congress to modify Law 18.216 (1983), which established the different measures to imprisonment. This bill suggested new different measurements to be included in the criminal code and proposed the introduction of electronic



monitoring. However, this bill was not discussed until 2011, when Sebastián Piñera came into office. Even though the Executive Power, using its co-legislative prerogative, asked Congress for the urgent discussion of the bill, it was not included in the session table, so its discussion was delayed until the next government: the Piñera administration. This administration introduced some modifications to it on August 31, and its discussion began in April 2011, for the same reasons already mentioned (Senado de Chile, *Tramitación Boletín* 5838–07).

During the discussion in Congress of the pending bill on the modernisation of the prison system and implementation of the electronic bracelet, Fundación Paz Ciudadana was consulted. This was due to the leading role that this organisation had taken in the public discussion of the Chilean Penal System. Dating back to 2002, Fundación Paz Ciudadana had submitted to the Ministry of Justice a draft bill for updating the system of alternative measures to punishment (Fundación Paz Ciudadana, 2008, p. 10). And in 2007, they signed a cooperative agreement with the Ministry of Justice to work together to propose measures for the improvement of the penitentiary system and its rehabilitation policies (Fundación Paz Ciudadana, 2008, p. 10).

Later, in 2010, President Piñera introduced amendments to the original bill, and its discussion began in the House of Representatives. The bill was finally passed on 13 June 2012 (Biblioteca del Congreso Nacional De Chile, n.d.b). It took 2 years to be passed due to the characteristics of the Chilean legislative process, that are slow and deliberative.

In 2013, the Rules of Implementation for Electronic Monitoring were published by the Justice Ministry and President Piñera (Ministerio de Justicia, Decreto 515, 18 January 2013). Since 2014, people who have been sentenced to home confinement or are under probation, or who have committed crimes, such as domestic violence and/or sex crimes, have used bracelets. In cases of domestic violence, victims are provided with electronic devices that alert them when the offender in question is closer than the permitted distance the judge has determined (Gendarmería de Chile, 2013). Needless to say, the introduction of the bracelet has not been without challenges regarding the relationship between the provider and the Gendarmerie, as well as the technology available for the Gendarmerie's surveillance of people who are convicted and sanctioned with electronic monitoring (Escobar, 2017).

Specifically, “after a very irregular process, the public tender was granted to SecureAlert, Inc., owned by the American company Track Group, which holds the tender until this date” (Escobar, 2017). The contract was for 35,153,352,000 Chilean pesos (approximately USD 55,000,000) (Escobar, 2017). Also, the contract had to be modified after facing serious technical issues for its implementation, such as the lack of working backup generators in case of a power outage, constant intermittences in communication with the telephone operators, and delayed information regarding the locations of subjects (Escobar, 2017). In 2015, the contract with SecureAlert expired and was given to Track Group, SecureAlert's mother company.

Despite the reforms, most of which dated between 2008 and 2012, numerous bills have been passed to increase the penalties for different types of crimes, thus enlarging the catalogue of faults that are punishable with jail (Consejo para la reforma penitenciaria, 2010, pp. 40–41; Bustamante, 2011; Espinoza Mavila et al., 2014). These bills, occurring at the same time of the aforementioned reforms, are counterintuitive within the context of the prison modernisation discourse, since they add harsher punitive measures to a system that was overly harsh to begin with. These actions responded to what the governments have called the “short-term anti-crime agenda” (*Agenda corta antidelincuencia*), a set of populist crime-fighting measures that were reactions to an increase in the perception of crime by Chilean society. Overall, this agenda has worked against efforts to remedy the overcrowding of prisons and the substandard living conditions inside (Durán & Dagnino, 2010). Also, following Sozzo (2016), these reforms could be characterised as a measure of penal populism “from above”, since they responded to electoral demands and not a punitive rationality.

### 3. Introduction of CompStat-based systems into the police

In 1996, Joaquín Lavín, who earned a masters in economics from the University of Chicago, as mayor of the wealthy Las Condes neighbourhood of Santiago, “contacted the New York-based Manhattan Institute about William Bratton’s zero-tolerance policing model”. Two years later, he “created a municipal police following Zero-tolerance”. The Carabineros (the police) “legally detained the urban guards, and objected [to] the creation of the force arguing it would mean an unequal provision of security to the poorer municipalities . . . . The government backed Carabineros and Zero Tolerance programs were defeated” (Hathazy, 2013b, p. 21).

In 2001, the Ministry of Domestic Affairs implemented a Geographical Information System (SIG in Spanish) to map crime statistics throughout the country (Tudela et al., 2003). It was used by the police as part of a security plan promoted by the Ministry (Ministerio del Interior y Seguridad Pública, 2004). Fundación Paz Ciudadana was another strong promoter of this technological advancement (Fundación Paz Ciudadana, 2009).

Almost a decade later, Bratton presented the Tactic System of Crime Analysis (Sistema Táctico de Análisis Delictual, STAD) to the Carabineros (Subsecretaría de Prevención del Delito, Ministerio del Interior y Seguridad Pública, 2012). Although it was based on the CompStat model, it apparently had fewer of the zero-tolerance policing components than its predecessor did. Counting on the support of Rodrigo Hinzpeter, the Minister of Domestic Affairs and Public Security (Ministerio del Interior y Seguridad Pública), STAD was financed by the Inter-American Development Bank, and technical support was carried out by Altegrity Security Consulting, a subsidiary of Altegrity Risk International. Later that same year, police officers were instructed in its use by Lou Anemone and Michael Berkow (two well-known former senior American law enforcement administrators) (Piñol et al., 2014, p. 2).

In a complementary fashion, in January 2015, the Banco Unificado de Datos (BUD), the Unified Data Bank, became operative. This system consolidates all information available regarding persons who have been investigated by or who have been prosecuted. BUD was created by an inter-institutional agreement signed in 2012 between the Judicial Branch, the Police (*Carabineros*), the Investigations Police, the Ministry of Justice, the Gendarmerie, SENAME (National Service for Minors), the Prosecution Bureau (Ministerio Público), the National Registration and Identification Service (Registro Civil e Identificación), and the Ministry of Domestic Affairs and Public Security. In 2016, BUD held 260 separate pieces of data (Subsecretaría de Prevención del Delito, Ministerio del Interior y Seguridad Pública, n.d. a). This system has two tiers: the Analytical Databank, (part of the Unified Data Bank), (maintained by the Ministry of Domestic Affairs and Public Security) and the Operative Databank (maintained by the Prosecution Bureau). The Analytical Databank is aimed at the development of crime analysis and responses.<sup>16</sup> On the other hand, the Operative Databank allows the aforementioned institutions to see detailed data of individuals and to trace the process they have gone through in the criminal prosecution system. It can also alert the users if there are any pending judicial actions against certain individuals (i.e. arrests). This system was legally approved by Law 20.931 in 2016 (Subsecretaría de Prevención del Delito, Ministerio del Interior y Seguridad Pública, n.d.a). For the development of the Analytical Databank, two public tenders were administered. The first one never got any bids, and in the second one, the company EVERIS Chile S.A. was granted the tender (Subsecretaría de Prevención del Delito, n.d. b). EVERIS is an international IT and robotics company, which is now part of NTT DATA Company (Everis, n.d.). The Chilean government spent USD 779,364.59 in 2013, and USD 1,239,571.74 in 2014 for the development of the data system (Subsecretaría de Prevención del Delito, n.d.b).

The Unified Databank was based on two former data projects: the Unified System of Crime Statistics (SUED in Spanish), proposed in 1997 to the Government by the Ministry of Domestic Affairs, the Justice Ministry, and Fundación Paz Ciudadana (Tudela, n.d.; Fundación Paz Ciudadana, n.d.), and the National System of Criminal Information (SINICRIM), which had been proposed in 2007. The SINICRIM was an older database shared by the police, the Investigations Police, and the Judiciary Branch. This was the first step towards BUD (Blanco,



2012). Later, in 2010, the Centre for the Study of Crime and Crime Prevention (CEAD in Spanish), a new department at the Ministry of Domestic Affairs and Public Security was created. In this unit, crime statistics are analysed by experts, detecting needs in public policies regarding crime and crime prevention (Centro de Estudios y Análisis del Delito CEAD, n.d.).

According to Hathazy (2016), police in Chile reacted to the central government as well as to new experts' demands of greater accountability. They designed "Plan Cuadrante" through which the needs of surveillance in a certain area were analysed in order to provide the area with proper supervision, responding to the needs of the community and creating a more trustful relationship among the Carabineros and the people (Oviedo, 2007). This helped them get closer to citizens, hence complying with a recent legitimacy standard, while maintaining an image of autonomy. The police were also able to avoid the appearance that they were being guided by university experts as well as the Dirección de Seguridad Pública e Informaciones (DISPI), the Government's intelligence agency of the time. Furthermore, through the application of Plan Cuadrante, the Carabineros prevented the introduction of a zero-tolerance policy that wealthy local right-wing municipal governments in Santiago were promoting, as well as the creation of municipal surveillance forces.

#### **4. Attempts towards more accountability in the policing department**

At the close of the first post-Pinochet administration, a series of reforms were introduced in the Carabineros using local experts, many of whom had training outside of the country (Hathazy, 2016). For example, Aylwin "hired specialists at the Christian Democratic think-tank, Center for Development Studies (CED), to work on counter-terrorism and then on police reforms" (Hathazy, 2013b, p. 20). In 1992, experts at DISPI and CED started producing new know-how in the policing field. At DISPI anthropologist Patricio Tudela, educated in Germany, a former political analyst working at the party think-tank during the transition, became a police expert working in the state. He introduced the notion of "Security in Democracy" from Germany that put legality, human rights and accountability as defining democratic policing. By 1995 he directed DISPI's office in charge of coordination with Carabineros (Hathazy, 2013b, p. 20).

A prominent figure at the CED, Hugo Frühling<sup>17</sup> became a specialist in counter-terrorism at first, before moving on to police surveillance policies in the context of a democracy (Hathazy, 2016, p. 21). Moreover, the Ford Foundation provided him with funding, for a study of the control of the police by civilians and the introduction of "community policing", "a model that was an integral part of the US foreign police policy" (Hathazy, 2013b, p. 21), launched by the US in the early 1990s.

At this time (early 90s), in an attempt to legitimise the introduction of the notion of "citizen security", developed in Spain during their transition to democracy, the Carabineros depended on a group of "criminal law scholars and criminologists at the Diego Portales Law School, fighting for human rights in the 1980s" (Hathazy, 2016, p. 21). Also, other important influences in this field came from the previously mentioned "think-tanks Fundación Paz Ciudadana (FPC) and Libertad y Desarrollo (LyD)" (Hathazy, 2013b, p. 21).

The traditional vision regarding police work inherited from the dictatorship was questioned by these new actors, who came forward with a new vision, different from the traditional one based on the concepts of state security, repression, and distance from the community. The new vision they proposed was one in which the police operated under citizen security, could be held accountable by the public, were more respectful of the rights of detainees, and were provided by many different agencies in an efficient manner (Hathazy, 2013b).

Due to their new political role, the restructured Superior Assessment Command (CAS in Spanish) of the Carabineros "elaborated a first Modernization Plan (Carabineros de Chile 1994) based on renovated 'professional education, respect for human dignity, efficiency in production of security and incorporation of technology'" (Hathazy, 2013b, p. 23).

Later, in 1998, the Carabineros developed studies in order to be able to justify budget increases, at the same time they redefined "their function and operations" (Hathazy, 2013b, p. 23). In short,

CAS was renamed the Planning Directorate, and they received assistance from the Economics Department at the Pontifical Catholic University of Chile. This allowed them to better determine the demand for police services and helped them justify, with scientific rigour, the need of additional resources for their effective functioning (Hathazy, 2013b, p. 24). The information produced by this work also enabled police managers to be in a more powerful position to challenge the budgetary restrictions placed on them by the Finance Minister; at the same time, they were “in a stronger position to discuss with the right-wing think-tanks, majors and senators” (Hathazy, 2013b, p. 24)

### ***5. Infrastructural reforms: Privatisation as a solution to an overcrowded and substandard prison system***

During the 1990s and early 2000s, a handful of reforms occurred in the correctional system (Ross, & Barraza Uribe, 2019). In 2000, for example, a new policy regarding jails was approved by the Ministry of Justice and implemented by the Ministry of Public Works, designed to increase the total penitentiary capacity by 16,000 spaces, as a means to reduce overcrowding and improve conditions for the prisoners. This plan depended on a two-tier financing model of 10 prisons to be built throughout the country: a public-private partnership, based on the French experience was approved, through which concessions would use the *Design, Build, Operate & Transfer* (DBOT) model. Their building would be financed by private prison firms, and their management would be financed by the Chilean government through the Ministry of Public Works (Álvarez & Ramírez, 2013). This model had the added benefit that it could be implemented by “taking the most of the private sector concerning the efficient management of scarce resources in the program’s different stages, thus allowing the liberation of public resources for other socially profitable uses” (Libertad y Desarrollo, 2012, p. 4). Using this model, 10 new prisons were planned and organised into four groups. For the first three groups, the State paid the licensee for every inmate received. However, the implementation was not devoid of problems, especially regarding the costs and negative effects on the entrepreneurs who had traditionally provided public prisons with educational and cultural activities as a means for inmate rehabilitation (see Cámara de Diputados, 2008). As a result, between 2005 and 2011, eight new prisons were built and started operating (Miranda, 2015), still missing to this date the last two needed to complete the 10 prisons originally planned (Monrroy, 2017).

In terms of the results of the concessions (DBOT model) prisons, it is important to note that Barberán (2012), Oliveri (2012), Arriagada Gajweski (2013), and Sanhueza and Pérez (2017) agree that there is scarce empirical evidence. In terms of cost-efficiency, Dammert and Díaz (2005) concluded that the cost per inmate per day in public prisons was USD 11, while the per-inmate cost in the concessions prisons was USD 35. Moreover, Sanhueza and Pérez (2017) found that by the year 2013, there were some important differences in the outcomes of concessions prisons in comparison to public prisons. Using data from the First National Survey of Perception of Life Quality Inside Prisons (Primera Encuesta de Percepción de Calidad de Vida Penitenciaria) carried out by the Gendarmerie in the year 2013 and from research conducted by the Fundación Paz Ciudadana (FPC) think tank, in which recidivism levels in concessions and public prisons were compared, Sanhueza and Pérez (2017) were able to conclude that in the decade between 2003 and 2013, concessions prisons had not been able to carry out the objectives upon which their implementation was based: that is, they had not proven to be more efficient in terms of rehabilitation measures. Concessions prisons proved to be better than public prisons in terms of infrastructure and hygiene, but received lower evaluations from inmates in terms of the quality of food, health services, violent treatment from correctional officers, and the availability of educational, recreational, work, and rehabilitation activities (Sanhueza & Pérez, 2017).

At the same time, the inmate population has grown exponentially: since 2005, increasing rates of incarceration were experienced across the country, while the increased spatial needs have not been met in a timely manner, thus adding more pressure to the prison system. In particular between 2006 and 2010, the prison population increased 44.9% vs. between 2000 and 2005 when it increased 10.8% (Morales et al., 2012, p. 6). In addition, in 2012, the new Ministry of Justice changed the

threshold for measuring the maximum capacity of Chilean prisons, allowing for more inmates to be received into concessions prisons without the licensees having to pay penalties for overcrowding (Saavedra, 10 January 2012, *El Mercurio*; Cooperativa.cl, 2013). This statistical shift reduced overcrowding in terms of figures, but not in practice (Rojas, 2012). This trajectory is illustrated by the fact that the total penitentiary population in Chile, as of February 2016, comprised 47,792 people, and as of 31 December 2018, the population was 49,945, distributed throughout the 92 prisons in the country (Gendarmería de Chile, 2020). The country's prison capacity for 40,425 inmates has remained unchanged since 2012 (Gendarmería de Chile, 2012, 2016).<sup>18</sup> It would be logical to assume that the reform of the criminal prosecution system and the building of new prisons would improve the situation of prison overcrowding in Chile. Nevertheless, overcrowding has remained a crucial problem for the Chilean prison system, which contributes to other problems, such as living conditions, health, and security issues (Valenzuela, 2005).

#### IV. Summary

Both popular cultural depictions and scholarly analysis portray the operation of criminal justice agencies and processes in most Latin American countries as dissimilar to those in many advanced industrialised countries. Understanding the factors that motivate the different reforms that have been proposed and which ones have been adopted/rejected in order to improve conditions is necessary if we are to improve the provision of criminal justice, not only in Chile but also in other Latin American countries. This is especially important, if we want to evaluate how these countries have shifted from dictatorship to democracy.

What this analysis seems to suggest is that despite the Government wanting to improve conditions for inmates and to lessen the number of people doing time, the powers-that-be are quick to look to the US for solutions. The inefficiency of the Government in post-Pinochet Chile has been mentioned, while Chile is experiencing an increasing amount of crime in the past decade (Olavarría-Gambi, 2007). However, corruption does not seem to be a factor motivating decisions (Siavelis, 2000).

The slow pace of change in the post-Pinochet era has been noted by many political observers. According to Oxhorn (1994), “despite the Aylwin government’s pledge to address the social debt inherited from the military regime, there have been few changes in the day-to-day lives of many people – who perhaps had unrealistic expectations about what a return to democracy would mean . . . . Similarly, the pace of democratic reform has been slow in key areas. For example, Pinochet remains a very vivid reminder of the power that the right and military still exercise” (p. 752). Oxhorn also notes that “while people are frequently frustrated by the pace of change and the lack of popular participation, they are unsure about how to express such frustration” (p. 755).

#### V. Conclusion: why is Chile pursuing these initiatives?

Numerous reasons can be advanced to explain why Chile is adopting these neoliberal criminal justice policies and practices. There are at least six interrelated hypotheses.

First, like the so-called snake oil salesmen who roamed the American West or stereotypes of used car salesmen, experts are constantly crisscrossing the globe, trying to sell policies, practices, criminal justice hardware, and institutions. Why? Because there is money to be made from the adoption and implementation of these items (e.g., Perkins, 2004; Weisburd & Lum, 2005). As previously alluded to, there may not be a definitive “smoking gun” explanation, but there may be *a coalescing of interests that have been influenced by neoliberal ideas, policies and practices*. Thus, the greater the number of experts propagating neoliberal criminal justice initiatives, the greater the likelihood that some will be adopted.

Second, Chilean politicians, and decision-makers are *susceptible to (may be enamoured with) foreign criminal justice ideas and practices packaged in the verbiage of the day*. The shortage of

home-grown expertise in criminal justice policy and practice evaluation could have resulted in a greater susceptibility to poor or nonexistent dispassionate critical analysis.

Third, there may be a *belief that the new policies and practices from abroad (especially the US) are somehow better than ones that are home-grown (i.e., Chilean)* (e.g., Solimano, 2012). Thus, the greater the trust in foreign-based initiatives (and the devaluation of home-grown/indigenous solutions), the higher the possibility that policymakers will suggest and implement them.

Fourth, *selected government bureaucrats may believe that they can benefit from suggesting, acquiring, and implementing neoliberal policies, practices, and institutions*. This does not necessarily imply a level of financial corruption; however, it may enhance their careers by enabling these individuals to elevate their status in their agencies, and receive a raise and/or a promotion. These arguments are similar to those developed in the state theoretical tradition (e.g., Skocpol et al., 1985). This perspective argues that, because in the end a government agency will be responsible for the implementation of a policy decision, it will hold sway in the success of the program and/or practice. Thus, the greater an individual's career might be enhanced by the new initiative, the greater the likelihood will it be championed.

Fifth, a number of think tanks and lobbying groups (e.g., Fundacion Paz Ciudadana) have deep ties to political parties, and there is a certain amount of *circulation of elites* (Pareto, 1901/2001). They suggest new (or repackaged) ideas, policies and practices each time there is a change (e.g., election) of political parties or administration. The more powerful the think tanks and lobbying groups that advocate neoliberal ideas, the higher the likelihood that some of the ideas will be considered and/or adopted.

Sixth, there is a *culture of fear that political parties, politicians, political candidates, and the news media help to perpetuate*. This is very dominant in the area of public safety, and puts pressure on the criminal justice system to avoid becoming a bottomless pit for spending tax dollars. The greater the perceptions that crime is increasing and the assumption that current criminal justice agencies are either unwilling or unable to accomplish their tasks, the greater the odds the leadership will experiment with new public policies and practices.

Civil society seems absent from these reforms, so it could be that the anti-democratic nature of the Pinochet regime has continued within a neoliberal project that is only nominally democratic, making progress slower. Thus, increases in the prison population/failure to adequately reduce overcrowding are likely due in part to the profit motive inherent in private corrections.

One final item should be addressed as a worthy cautionary note. Blaustein (2016a, 2016b) warns us that so many of the northern "solutions" for crime prevention that have been introduced in South American countries lack a number of key criteria (especially knowledge of the local terrain) and that is why they ultimately fail. More specifically, through an analysis of the plan developed by the well-known American criminologist Larry Sherman to introduce evidence-based crime prevention in Latin America (with the cooperation of the Inter-American Development Bank), Blaustein identifies several flaws in the thinking surrounding this plan.

In summary, the interrelation of policy transfers through a globalised world, the uncritical adoption of northern crime policies which benefit local bureaucrats, the influence of think tanks in the adoption of public policy, and the culture of fear that sacrifices democracy in the decisions about public policies benefiting market-based decisions, help explain how Chile has adopted neoliberal criminal justice reforms. However, it is important to keep in mind Blaustein's cautionary note regarding the lack of adaptation of these policies to the local culture. Finally, as we analysed the reforms, the following questions arose: Why is the bureaucracy not designing "local" policies? And, why did these reforms take so long to take place? Until we have this information, we must be satisfied by the answers provided in this article.

Finally, we would like to advocate for a series of case studies using systematically collected information and/or data that documents the process of the introduction of neoliberal criminal justice policies and practices in other emerging democracies of South America. We also believe that the above-mentioned hypotheses can be further tested through other research methods, such as

face-to-face or SKYPE interviews, focus groups, and survey data collection. Although these kinds of techniques are important, we believe that document review and analysis has provided us with a number of important observations upon which we can build. Only in this manner will we have a better sense of what is going on throughout the region.

## Notes

1. Translated this means “To big cautions, greater ones”.
2. The identification and association of these kinds of policies and practices as neoliberal has been criticised by a handful of scholars (e.g., Lacey, 2013; O’Malley, 2016). It is not the intent of this paper to debate this issue, nor does a failure to engage with this perception detract from the overall mission of this particular research effort.
3. We have chosen not to formally define neoliberal criminal justice policies and practices because we believe that readers of this article should be familiar with the scholarship on neoliberal initiatives and because of the variety of policies and practices that have been subsumed by this definition (most of which we list). Again see, for example, Lacey (2013) and O’Malley (2016) for a discussion.
4. Readers should not assume that we are conflating the term “neoliberal” with “punitive,” as some of the policies and practices are focused on rehabilitation (e.g., drug courts) and/or decreased reliance on prisons (e.g., electronic monitoring), or better police accountability (e.g., police body cameras). Likewise, not all initiatives that are transferred are punitive even though this may be the end result.
5. See also, Fonseca (2018) for an alternative explanation of changes in the Brazilian criminal justice system.
6. To be fair, in other articles that he published, and we cite, he goes into greater detail with respect to particular criminal justice agencies in one or more Latin American countries.
7. The revision of the constitution is now a more prominent public policy issue in the wake of the 2019 riots, but it has stalled because of the government’s handling of the COVID-19 pandemic.
8. Its administration was privatised during the dictatorship through a system designed by José Piñera (a Chilean economist and noted “Chicago Boy”).
9. Thus, this analysis sits at the crossroads of scholarly literature on comparative criminal justice, globalisation, and policy dissemination/diffusion.
10. There is a steady trickle of Chileans who have chosen to earn masters and doctorate graduate degrees in the field of Criminology/Criminal Justice in the US and the UK, and may have either studied with an expert or be exposed to their work. For an example of this process, with students from the Peoples Republic of China, see for example, (Ross & Dai, 2012).
11. Fundación Paz Ciudadana was started in 1992 by Agustín Edwards, a wealthy media owner. It was run by economists trained at the University of Chicago, as well as individuals who had expertise in propaganda, and received financing from the principal Chilean corporations at the time. “The FPC put crime at the center of the political agenda right after transition and promoted the municipalization of the police” (Hathazy, 2013b, p. 21). On the other hand, Libertad y Desarrollo was created in 1989, and they advised the Independent Democratic Union (UDI), a right-wing party, on crime control, as well as the “crime control policies of Joaquín Lavín” (Hathazy, 2013b, p. 21).
12. At the time of writing of this article, Piñera was in office for his second term, which will end on 11 March 2022.
13. Because of space limitations, this article does not discuss the detailed US historical precedents of each new neoliberal policy or practice. Also, although a Juvenile Justice Bill was passed in 2005 (Ley 20.084 de Responsabilidad Penal Adolescente) and was influenced by non-Chilean statutes, it responded to a need to implement better human rights standards regarding children and teenagers. This law was passed due to Chile’s international human rights commitments, specifically those of children and teenagers, after the country signed and ratified the Convention on the Rights of the Child. Also, there was an effort to make the whole criminal justice system more efficient in the context of the Reforma Procesal Penal that took place between 2000 and 2005 (Langer & Lilo, 2014).
14. The inquisitorial system is characterised by the decision being made by the judge based on an investigation conducted by him/herself, while the adversarial one is characterised by the judge’s decision being based on evidence presented by the public defenders and public prosecutors. These latter type of trials are public and oral.
15. This bill was signed by President Bachelet, the Minister of Justice Carlos Maldonado, the Minister of Domestic Affairs (*Ministro del Interior*) Edmundo Pérez Yoma, and the Minister of Finance (*Ministro de Hacienda*) Andrés Velasco.
16. It was approved by Law 20.502, which was passed on 21 February 2011, and later modified in 2014, 2015, and 2016.



17. A Harvard Law school graduate, former Ford Foundation fellow, and academic advisor to the human rights organisation Vicaría de la Solidaridad during the dictatorship.
18. As of 2020, the prison capacity declared by the Gendarmerie is of 40,376 people. This could be explained by a change in the calculation of the capacity.

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