LEILA CAVALCANTI CASTRO
EDITOR

CRIMINAL LAW

Past, Present and Future Perspectives

Contributors

Oscar Daniel Franco Conforti
Petya Mitreva
Jorge Alberto Núñez
José Daniel Cesano

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Chapter 3

A JURIDICAL APPROACH TO IMPRISONMENT (1887-1955): HISTORIOGRAPHICAL NOTES ON THE ORIGIN OF PENITENTIARY LAW IN ARGENTINE UNIVERSITIES

Jorge Alberto Núñez*[1,3,*], *PhD
and José Daniel Cesano*[2,†], *PhD
[1]Consejo Nacional de Investigaciones Científicas y Técnicas,
Universidad de Buenos Aires, Facultad de Ciencias Sociales,
Historia Social Argentina, Cátedra Depino, Argentina
[2]Academia Nacional de Derecho y Ciencias Sociales de Córdoba,
Argentina
[3]Instituto de Investigaciones de Historia
del Derecho, Ciudad Autónoma de Buenos Aires, Argentina

[*] Corresponding Author Email: jorgenber75@gmail.com.
[†] Corresponding Author Email: danielcesano@gmail.com.

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ABSTRACT

The purpose of this chapter is to examine the origins and development of Penitentiary Law in the Law Schools of Buenos Aires, Córdoba and La Plata between 1887 and 1955. Although in the earlier times of this period, only the universities of Buenos Aires and Córdoba were active in the field, we have included the University of La Plata in order to have a complete overview of the academic world in those years.

The present chapter represents a first stage of our research and its conclusions have a preliminary character, because the diversity of sources to be examined makes it difficult to analyse them exhaustively at present.

The chronological limits of the period under study have been determined by heterogeneous criteria. On the one hand, the opening year of the period is related to the enactment of the first Penal Code in the Argentine Republic, which included legal regulations about punishments involving the deprivation of freedom. This suggested the question whether that code awakened in the scientific community some interest in the development of a specific juridical knowledge. On the other hand, the closing year of the period is associated with a stage in the evolution of penitentiary theories characterized by a certain degree of professionalization among people that enforced the sentences of imprisonment. Thus, the research aims at determining whether the professionalization of penitentiary forces was correlated with a parallel process at university law schools.

Keywords: Penitentiary Law, law schools, Buenos Aires, Córdoba, La Plata

GENERAL APPROACH

The purpose of this paper is to examine the origins and development of Penitentiary Law in the Law Schools of Buenos Aires, Córdoba and La Plata between 1887 and 1955. Although in the earlier times of this period, only the universities of Buenos Aires and Córdoba were active in the field, we have included the University of La Plata in order to have a complete overview of the academic world in those years.[1]

[1] Initially, our purpose was to include both the National University of the Littoral (Universidad Nacional del Litoral) and the National University of Tucumán. However, on account of the number of documents involved, and the difficulties to access and maintain archive materials, we decided to focus this first study on the above-mentioned universities (Buenos Aires, Córdoba, La Plata). In the case of La Plata, our research starts in the year 1913 although the School of Legal and Social Sciences was created in 1906. The intervening period will be covered in future research projects.

The present paper represents a first stage of our research and its conclusions have a preliminary character, because the diversity of sources to be examined makes it difficult to analyse them exhaustively at present.

The chronological limits of the period under study have been determined by heterogeneous criteria. On the one hand, the opening year of the period is related to the enactment of the first Penal Code in the Argentine Republic, which included legal regulations about punishments involving the deprivation of freedom. This suggested the question whether that code awakened in the scientific community some interest in the development of a specific juridical knowledge. On the other hand, the closing year of the period is associated with a stage in the evolution of penitentiary theories characterized by a certain degree of professionalization among people that enforced the sentences of imprisonment. Thus, the research aims at determining whether the professionalization of penitentiary forces was correlated with a parallel process at university law schools.

More precisely, the leading idea of this research is to determine whether the academic units which educated the elites who had influence on penal and penitentiary State policies did (or did not) analyse penalties involving the deprivation of freedom from a juridical perspective.

Which is the significance of this study?

It is evident that, insofar as imprisonment itself is not studied from the juridical point of view, no clear limits may be established as regards the enforcement of a sanction. In turn, this may explain the weight that the administrative practices of penitentiary personnel so frequently have, and the well-known risk of increasing discretionary uses at penal establishments.

Why do we emphasize the juridical approach?

Because it was not until the 1930s that this approach started to become visible. During the Tenth International Penal and Penitentiary Congress held in Prague in 1930, there were lively debates about emerging ideas in

the field of penitentiary practices, which "paved the way for the new field of Penitentiary Law as an autonomous branch" (Bergamini Miotto 2001, 107).[2]

In this context, we may add that the most famous champion of Penitentiary Law as an autonomous branch was Giovanni Novelli.[3] We are mainly indebted to him for the autonomy this branch of juridical studies gained from 1931 onwards. It became pedagogically autonomous in Italy when the chair of Penitentiary Law was created at the University of Rome.

In 1933, the International Association of Penal Law organized the Third International Congress of Penal Law in Palermo (Italy), which unanimously recognised "the existence of a Penitentiary Law, defined as 'a set of legal norms regulating the relations between the State and the convicted person, from the moment in which the guilty verdict legitimates the enforcement of the sentence to the moment it has been served in the widest sense of this expression'. Therefore, Penitentiary Law is not concerned with the enforcement of penalties; it consists in the juridical relations between the State and the convict, in the wide sense of the definition above" (Bergamini Miotto 2001, 108).

The Visibility of Penitentiary Law in the Syllabuses of Argentine Universities (1887-1955)

About Syllabuses and Their Contents

The educational work carried out in the universities includes the selection, organisation, critical analysis, and reconstruction of the knowledge, the beliefs, values, skills, and common usages derived from the local socio-historical development (Torres 1998, 97). The syllabus "may be described, therefore, as an educational project planned and developed according to a certain selection of cultural and experiential guidelines which are deemed desirable for the new generations" (Torres 1998, 97).

[2] The authors quote Sirnicusa (1935, 6-7).
[3] More about this author, Tellez Aguilera (2011).

Consequently, the subjects included in a university-level curriculum let us characterise the educational project involved. Besides, the topics contained in each subject suggest the contents of the subject as a whole.

Was Penitentiary Law somehow visible within the curricular structure of the Law Schools under study during the period we are considering?

Several assertions may be made, based on our research on the general curricula and the particular syllabuses we examined.

First, we notice that this discipline lacked the pedagogical autonomy needed to facilitate the teaching-learning process. "This is so because autonomy presupposes the segmentation of the dogmatic knowledge of law into various disciplines and sub-disciplines that study law as something distributed into different 'branches', such as civil law, penal law, labour law, commercial law (...) and so on" (Lariguet 2006, 49). Considering undergraduate courses, and according to the above characterisation of the discipline, Penitentiary Law as such did not appear in any of these universities in the period under study.[4]

Only in the University of Córdoba from 1941 onwards, we have found the expression "Penitentiary Law" included in the syllabus of Penal Law, Section 11, paragraph 1, when Pablo Mariconde was tenured professor (Historical archive 1941, 5). Obviously, this does not imply that the discipline had pedagogical autonomy as defined above.[5]

The second question to be highlighted is that –despite lack of autonomy– these findings do not imply that the question of imprisonment was absent from the concerns of jurists as teachers. On the contrary, some aspects of the subject were reflected in the syllabus of several disciplines. As regards the University of Córdoba, such was the case in the chairs of Administrative Law, Penal Law, and Judicial and Criminal Procedures.[6]

How could we characterise the contents included in those subjects?

[4] In future studies, we should investigate whether penitentiary contents were included in other degree courses such as Social Work (initially a part of Law Schools).
[5] As regards the University of Buenos Aires, in 1928, the syllabus of Penal Law (Eusebio Gomez's chair) included in section XXII, entitled "About the penalty," this heading (n°5): "Does a Penitentiary Law exist?" (Programa de derecho 1928).
[6] Such was the original name of this subject. Later on, when the new general curriculum was accepted on November 14th, 1942, this subject was called Criminal Procedural Law (Torres 2017, 194).

Going on with Córdoba, the syllabus of Administrative Law prepared by Félix Sarría in 1930 included in its section 12 the following headings: "Prison regulations. Hygiene. Workshops. Schooling" (AHD.UNC 1930, 5). In the 1940 syllabus, these headings disappear to be included again in 1952 in section XXI, when Horacio Ahumada was tenured professor. It should be noted that the 1952 syllabus is slightly different from the one prepared by Sarría.

The 1930 syllabus is focused on certain elements we now include in the penitentiary regime, defined as "the set of norms regulating all the aspects of life for people deprived of their freedom who are serving a sentence, particularly the fact of co-existing with other inmates, discipline, and work" (Arocena 2014, 223). Sarría takes precisely these questions into account when he includes hygiene, workshops and schooling as study items. On the other hand, the following headings are noteworthy in the 1952 syllabus: "Gaols. Surveillance. Released convicts. Constitutional tenets. Penal institutions" (AHD.UNC 1952, 17). A greater juridical concern may be noticed in these contents since, besides regulatory considerations relative to prison regimes, the subject of constitutional tenets –absent in the 1930 syllabus– is also included.[7]

In the syllabus of Judicial and Criminal Procedures some aspects of gaol organisation are also included. Strictly speaking, in the earlier versions of the syllabus there is a generic reference to this topic, relative to the enforcement of the sentence. Such reference is indirectly connected to sanctions involving the deprivation of freedom insofar as the 1887 Penal Code mentioned the punishments of confinement with forced labour,

[7] Circumstances were very different at the University of Buenos Aires, although we must further examine the situation. In 1920, the syllabus of Administrative Law in Vicente C. Gallo's chair did not contain any topic relative to prisons (though it mentioned Police, healthiness, education, charity, etc.). Neither do we find a section devoted to prisons in Elements of Argentine Constitutional and Administrative Law (unknown tenured professor) two years later, even though there were some related topics such as "Remedies of the Suits," "Punishable actions," and "Individual guarantees," which in turn included "Death penalty for political causes, torment, flogging, prisons." In 1929, the syllabus of Rodolfo Bullrich's chair of Administrative Law did not mention prisons. No topic related to prisons was mentioned in the other two chairs, Elements of Constitutional and Administrative Law (Enrique Ruiz Guiñazú) and Elements of Public Law (Atilio Pessagno). The same may be said of the chairs of Administrative Law and Elements of Public (Constitutional and Administrative) Law in the year 1934.

penitentiary, imprisonment, and arrest.[8] From 1925 onwards, the question of imprisonment became more visible in this curricular subject. When Julio B. Echegaray was appointed tenured professor, the 19th section of the syllabus included, besides the enforcement of sentences, the following topics: "Prisons. Their inspection and visits of judicial authorities. Gaolbreaking" (AHD.UNC 1925, 279). The same trend may be observed in the syllabus prepared by Ernesto S. Peña in 1930 (AHD.UNC 1930, 10).

In 1937, the lecturing substitute professor, Alfredo Vélez Mariconde, introduced some changes in the syllabus by further specifying the stage of penal enforcement in section 11 (AHD.UNC 1937, 11). He merged under the same heading three different topics identified by individual numbers: two procedural contingencies –remedies and enforcement– and some special procedures. The outstanding feature of this syllabus is a detailed list of contents relevant to enforcement: the concept involved, characteristics, budgets, enforcement entities, and accumulation of sentences. Some confusion is derived from placing "gaolbreaking" and "parole" under the heading of "special procedures" because, strictly speaking, they are contingencies specifically associated with the enforcement of a sentence of imprisonment or incarceration.[9]

[8] Such is the case of the 1915 syllabus of Pedro N. Garzón (AHD.UNC 1915, 11), which included in Section XX the topic "Enforcement of the sentences."

[9] Let us briefly outline what happened at the universities of Buenos Aires and La Plata, a subject which needs further research. As regards the University of La Plata, Joaquín Carrillo was the lecturer of Judicial Organisation and Penal Procedures (Alfredo I. Bozzetti was the substitute professor). The subject of prisons is briefly mentioned in the syllabus. There is a topic entitled "Prisons: surveillance and inspection. Duties of the judges and managing officials. Visits. Gaolbreaking. What the judges must do (Organización Judicial, 1913). It should be noted that no reference is made to prison-related questions in the bibliographical references or in the guide for practical assignments. At the University of Buenos Aires, in 1923, the subject Penal Law and Procedures was given by Jorge Coll. In Section III of the syllabus, under the title "About penalties" we find the following topics: "Legal differences as to the enforcement of incarceration or imprisonment sentences"; "Product of the prisoner's work"; "Restriction of civil rights"; "People sentenced to imprisonment or confinement by provincial courts"; "insane inmates"; "Disqualification as the main or accessory punishment"; "Limited disqualification"; "Fines: their regime"; "Means used to accomplish the offense"; "Argentine penal facilities." Finally, section IV included the following topics "Parole: requirements established by law. Reversal causes. The court has discretion to establish that time on parole does not count as time served. Effects of reversal and sentences that allow the criminal to be free on parole: effects. Fundamentals of this institution. Repair of damages: questions included. Different forms of carrying out the

In the 1940 syllabus, also prepared by Vélez Mariconde as lecturing substitute professor, the confusion was partially rectified. Even though the topic of "gaolbreaking" was still mentioned under the heading of special procedures, parole was included in the stage of enforcement (AHD.UNC 1940, 8). The same structure is repeated in the 1944 and 1951 syllabuses (Section 20) (AHD.UNC 1941), and also in the 1952 syllabus (Section 20, I) (AHD.UNC 1952, 8).

The increasing specificity of penal enforcement during the period 1937-1940 may be attributed in the case of Córdoba to the new Criminal Procedural Code of this province, the writing of which was entrusted to Vélez Mariconde and Sebastián Soler by Governor Amadeo Sabattini (from the Radical Party). In the Rationale that preceded the bill sanctioned years later, the two authors said: "Immediately, we regulate the incidents pertaining to enforcement, which are totally absent in the law currently in force" (Proyecto de Código de Procedimiento 1938, CXXV).[10] In effect, unlike the previous Code, the new one described in some detail the steps comprised in the enforcement of a criminal sentence, and established the following provisions with respect to penalties involving the deprivation of freedom: suspension of sentence enforcement (art. 538); a four-hour leave to perform moral obligations (art. 538); hospitalisation of the diseased inmate after due medical inspection, with this period being computed for the completion of the sentence (art. 539); report to the National Government required in the case of incarceration in the southern territories of the Republic (art. 540); house arrest (art. 545), and parole cases (arts 547 to 552).

Undoubtedly, the question of imprisonment became more visible in the Penal Law syllabuses. It was a logical consequence because the legal regulation of sentences involving the deprivation of freedom pertains to the Penal Code and its specific complementary regulations.[11]

repair. Ranking of the obligation. Obligations among the partners and third parties' liability" (Programa de Legislación 1923).

[10] This Rationale was published after the Procedural Penal Code was sanctioned (Act 3.831) on August 28th, 1939.

[11] That is to say, Act 11.833. For the ideological context of that Act and other subsequent regulations (executive order 412/1958 and Act 24.660), see Cesano (2003, 73).

In the earliest syllabuses, there were isolated references to the regulation of the penalties involving the deprivation of freedom specified in the 1887 Penal Code (confinement with forced labour, penitentiary, imprisonment, and arrest). Such was the case of the 1885 and 1886 syllabuses prepared by José del Viso and Cornelio Moyano Gacitúa, respectively, at the University of Córdoba. In the first one, within the section entitled "About penalties," the following topics were detailed: "Division of penalties according to their effects on individual freedom. Confinement with forced labour, Penitentiary, Imprisonment, and Arrest. (...) Provisions in the Code about each of these penalties and their enforcement" (AHD.UNC 1885, 9). The 1886 syllabus maintained the same structure (AHD.UNC 1886, 8).

With the advent of Julio Rodríguez de la Torre to the chair, penitentiary considerations appeared in greater detail in the following syllabuses. For example, in the 1916 syllabus (AHD.UNC 1916, 8-9), contents related to gaol issues were distributed in sections XIV through XVI. In agreement with previous criteria, Section XIV proposed a description and analysis of all penalties involving the deprivation of freedom. In the first part of the following section, the topic of penal colonies, advantages, drawbacks, and practical results was included. In section XVI, under the heading "Length of the sentences," the following topics appeared: "Penalties determined by the General Director of Prisons. Advantages and drawbacks. A possible solution. Parole and suspended sentences. (...) Their usefulness." Later on, references to comparative law were made, and the French and American System were specifically mentioned, as well as the relevant suggestions made in the Penitentiary Conferences of Saint Petersburg and The Hague.

The 1920 syllabus maintains the same structure (AHD.UNC 1920, 10-11).

Although Rodríguez de la Torre continued as tenured professor, the 1925 syllabus introduced some changes (AHD.UNC 1925, 10). The question of gaol-related matters was redistributed into sections XV and XVI. For the first time, the heading "Penitentiary systems" was introduced, in the first section, with the following contents: Different systems and the

penitentiary regime. Penal colonies. Reformatories. Welfare board for released inmates. Parole." Section XVI includes an analysis of the penalties listed in the 1921 Code, among them the two species of sentences that involve the deprivation of freedom (imprisonment and incarceration).

After Rodríguez de la Torre ceased as tenured professor (1926), some changes were introduced in the syllabus when Pablo Mariconde began lecturing, first as acting professor and later as tenured professor. When we analyse the 1926 (AHD.UNC 1926, 77-86), 1927 (AHD.UNC 1927, 77-86), 1928 (AHD.UNC 1928, 77-86) and 1929 (AHD.UNC 1929, 1-14) syllabuses, we see that the question of gaoling was included in sections XVI and XIX. In the first section, "The sanction" was defined, and the following topics were specified: "Penitentiary systems. Penal colonies. Reformatories. Argentine penal law." In section XIX, the following topics were included: administrative adaptation of the penalties to the individual and parole. In the Explanation that was always added to the syllabus in that period, Pablo Mariconde praised the course given in 1925 by the Spanish professor Luis Jiménez de Asúa. According to the approaches of that jurist from Madrid, a "Practical Course" was included in the syllabus for the first time (1926), which mentioned two penitentiary questions: "The Penitentiary of Córdoba" and "The Women's Prison of Córdoba." As regards the selection of practical topics, professor Mariconde wrote: "A positive sense rather than a theoretical speculative tendency has guided us in the selection of these topics because we deemed it more profitable for second-year students: it stimulates the spirit of observation and the critical attitude pre-supposed in purely doctrinal research work."

Pablo Mariconde continued as tenured professor and Sebastián Soler was appointed substitute professor. In 1941, the syllabus (AHD.UNC 1941, 5) suffered a change that affected section 11, referred to penalties involving the deprivation of freedom. As we have already noted, the topic "Penitentiary Law" was added and, immediately below, among the subtitles, "Prisons and Penal Colonies." Besides, in the same section, under the heading dedicated to the adaptation of penalties to the individual, parole was also mentioned. The structure was maintained in the 1947

syllabus (AHD.UNC 1947, 11)[12] though the corresponding section was numbered 19 instead of 11.

Finally, in the 1952 syllabus (AHD.UNC 1952, 7) of the first course of Penal Law, still given by Pablo Mariconde, this topic was restructured again. It was included in section XVII and the heading "Penitentiary Law" was removed and only the following topics were kept: "Penalties involving the deprivation of freedom. Penitentiary systems. Parole. Argentine Law."

Let us see what happened at the University of Buenos Aires. During the period under study, tenured professors of Criminal Law also stayed in their chairs for several years (the same happened at the University of Córdoba).[13] For example, the Piñero "dynasty" (Norberto and Osvaldo M.) held the chair from 1887 to 1921.[14] Afterwards, during the 1920s and 1930s, there were two different chairs of Criminal Law, occupied by Juan P. Ramos and Eusebio Gómez. In the 1940s, the rise of Peronism caused some resignations and dismissals, so some tenured professors changed and others were appointed, among them Carlos Fontán Balestra, Hernán A. Pessagno, and Ricardo Levene, Jr.

[12] By that time, the subject Criminal Law was officially subdivided in the curriculum into a first course dealing with the criminal law, the offence, and the penalty in general, and a second course dealing with the different offences defined in the Second Book of the Penal Code.

[13] See in the Appendix the list of professors who were in charge of the Criminal Law chair.

[14] It is a well-known fact that in 1887, when Norberto Piñero was tenured professor, his team "embraced" criminological positivism, which would be the prevailing trend in the courses for many years. However, how did the penitentiary question appear in the previous *classical* syllabuses? In the 1880 syllabus of Manuel Obarrio, it is difficult to find any reference to this issue. In section VIII, a brief mention of the subject does appear: "Penalties involving the deprivation of freedom: Confinement with forced labour-Penitentiary-Imprisonment - Arrest." Four years later, in the notes taken by a student who attended Obarrio's lectures, we see that lesson XIV refers to punishment in a penitentiary and covers in detail the following topics: "The penitentiary. A problem to be solved. General considerations. Foundations of the penitentiary system. Isolation. Work. Education. Arts and crafts as a complement. The first penal establishment of this kind. Where did penitentiaries take their true shape. Philadelphia. Auburn. Disputs over the respective advantages of these establishments. The mixed system. Bases. The most successful penitentiary systems. The English system: its division into units. The Irish system: its division into units. Actual state of the penitentiary question. Penitentiary facilities: different designs. The Panopticon. The Radial. First areas and gaols assigned among us to the custody of criminals. The Argentine Penitentiary: description. The system selected. Main criteria. Outstanding points of the organisation. Remarks on the rules for inmates. Foreseen amends. Their importance. Gradation of the new system proposed. Does our penitentiary system satisfy every aspiration? Results up to now. Provisions in the Penal Code for the penalty of penitentiary. Conclusion" (Curso de Derecho Penal 1884).

Which were the penitentiary topics included in the Law School of Buenos Aires?

As we have seen in the case of Córdoba, gaol matters did not have a relevant place in the subject Penal Law as it was given at the University of Buenos Aires. For example, in the 1888 syllabus of Penal Law, Norberto Piñero,[15] included the death penalty (discussion, time and mode of enforcement, exemptions); confinement with forced labour (concept, length, enforcement, aggravation, and accessory penalties); the penalty of penitentiary (length, enforcement, aggravation, the system used in the Buenos Aires Penitentiary), and the penalties of imprisonment, arrest, banishment, disqualification and fines (Programa de Derecho Penal 1888). The syllabus prepared by the two Piñeros maintained a similar structure for several years and suffered just a few changes.[16] The General Section included the Fundamentals of Penal Law including a review of crime and punishment from the *primitive ages* to the present (covering the East, Greece, Rome, ecclesiastical criminal law, the Middle Ages, etc. up to Beccaria). The different (classical, correctional, and positive) schools were also examined, as well as different thinkers in the field (Beccaria, Lombroso, Ferri, Garófalo, etc.). Crime and its causes were analysed, and

[15] In Norberto Piñero's personal dossier, that we consulted at the Law School Museum and Archive, we found that in 1887 he was substitute professor of Commercial and Penal Law and that he was appointed tenured professor for a second, recently created chair of Penal Law. In the ranking of candidates, Juan José Montes de Oca occupied the first place, and Norberto Piñero the second one, but Montes de Oca asked to be excluded from the short list. In March 1897, Piñero resigned as tenured professor of Penal Law. In 1908 he was appointed member of the Academy of Law, and in 1931 he was appointed honorary professor. (We are indebted to María del Carmen Maza, in charge of the above-mentioned Museum and Archive, who provided access to these files).

[16] On October 17th, 1888, Osvaldo M. Piñero was appointed substitute professor of Penal Law. On February 21st, 1896 he was included in the short list of candidates for the chair of Administrative Law (previously a part of Constitutional Law). Emilio Castro was ranked in the first position, Osvaldo Magnasco in the second, and Piñero in the third one. A year later, Osvaldo Piñero was part of the list proposed for Penal Law because Norberto Piñero had resigned. He was ranked in the first position, Osvaldo Magnasco in the second, and Rodolfo Rivarola in the third one. On May 31st, 1897 he was appointed tenured professor of Criminal Law. Between 1910 and 1916 he was a member of the Directive Council of the Law School, and in 1919 he was a temporary member of the same Council. Finally, he retired in 1921 (MyAH, FDUBA).

both offenders and penalties were classified. Finally, all the different kinds of offences were analysed in the Special Section.[17]

The last syllabus of Osvaldo M. Piñero previous to his retirement in 1920 was similar in its form to the previous ones. There were only two sections that referred to gaol matters. Section VII included the following topics: "Penal law and its relation with the different classes of offenders and the type of offence. Gaol systems. National establishments. Reformatories. Modern trends in criminal policies." In section VIII, under the heading "The struggle against crime," the following topics were included: parole and probation, the indeterminate sentence; other topics referred to measures against alcoholism, vagrancy, and mendicancy. There were also some questions relative to the treatment of juvenile delinquents and welfare boards for released inmates (AHD.UNC 1920).

The advent of Juan P. Ramos and Eusebio Gómez to the position of tenured professors did not increase the interest in gaol problems. A paradoxical fact, to say the least, if we remember that in the 1920s both these jurists had been alternatively directors of the most important penal establishment in Argentina: the National Penitentiary, on Las Heras Avenue, Buenos Aires.

Was it not a wonderful occasion to organise visits to that establishment so that students might know without intermediaries the regime applied to inmates in order to *regenerate* them, and thus awaken their interest in the enforcement of penalties?

Apparently, for these jurists specialized in criminal law (and so many others),[18] the world of universities and the penitentiary world (or the academy and the prison) pertained to totally different spheres.[19]

[17] See, for example, the following syllabuses of Penal Law: 1893, 1895, 1897, 1898, 1899, 1901, 1902, 1919.

[18] For example, in those years, one of the substitute professors was José María Paz Anchorena, who was appointed General Director of Penal Institutions (substituting Juan José O'Connor). Some years later, Eduardo Ortiz, former General Director was appointed substitute professor to the chair of Fontán Balestra, but it seems their double character did not imply a deeper study of the penitentiary problem.

[19] The proof of the pudding is in the eating: in a series of lectures given by Ramos at the University of Buenos Aires, minimum references were made to the question of prisons. Thus, in a section devoted to the "Penal Law for Children," he mentions the Elmira Reformatory (located in New York) and European colonies for youths. Later on, when he

A close look at Gómez's 1928 syllabus reveals some references to the question of gaol matters.[20] For example, in section II —devoted to the relations of Penal Law with other branches of Law (related to philosophy, political economy, anthropology, etc.) and its differences from them—, a mention is made to "forensic medicine, psychiatry, and the penitentiary technique." Later on, we find a more detailed analysis of penal science (its schools and thinkers) than the one proposed by Piñero, as well as a deeper discussion of offenders and the offence, with some references to the path followed in Argentine penal codification. Section XXIV is the only one exclusively devoted to the gaol matters. There, we find the following topics: ""Historical review of the penitentiary reform carried out from Howard to our days"; the diverse penitentiary systems were also mentioned (though not expounded), besides the *essential elements* to "regenerate" the inmates: work, education, discipline and –as a complement– the welfare board for released inmates.[21] The regime in force at the National Penitentiary was also studied. Finally, in section XXIX, the topics included were probation; pardon, indeterminate sentences and parole (AHD.UNC, 1928).

If we analyse the syllabus prepared a year later by Juan P. Ramos, we see that it was practically identical to that of Gómez with respect to gaol matters, the relation between Penal Law and "the penitentiary technique" (the syllabus included an analysis of his main works).[22] It also mentions

did mention, just on one page, the Marcos Paz Colony for Youths, it was to criticise it scathingly, saying that it housed a mixture of inmates: murderers, vagrants and youths that had not yet committed offences, and that "...work was relatively slight there; inmates were taught to make brooms and two or three other trifles." (Apuntes de derecho penal 1921). Let us recall that some years after these lectures were published, Ramos would be appointed Director of the National Penitentiary (it should be noted that the most important prison break occurred while he was in charge).

[20] Up to now, we have not found Gómez's and Ramos's syllabus for the period 1923-1928.

[21] The different forms of organising and exploiting the work of inmates was analysed in this syllabus, as well as the compensations due to them in the event of an accident, etc. It should be noted that Gómez tried to improve the question of inmates' work during his administration of the National Penitentiary.

[22] This syllabus contains a topic that is absent in all the other we have analysed: it refers to "criminal institutions in the mid-18th century," and the following subtopics are listed: a) criminal law from the Lex Carolina onwards; b) capital penalties; c) corporal penalties; d) corporal punishments; e) mutilation; f) procedural systems; g) la lettre de cachet (Programa de Derecho Penal 1929).

diverse penitentiary systems and the key elements required for the regeneration of the inmate, etc. The same may be said of the 1934 syllabus, which was practically similar to the preceding ones, though some additions may be noted, as well as a different prioritisation of the topics included. Thus, section XIX deals with the organisation and regulations of the Buenos Aires National Penitentiary and other Argentine penal establishments. A novel interest in people convicted by provincial courts can be observed. It should be noted that Law 11.833 relative to the Organisation of Prisons and the Penal Regime, which was sanctioned the year before, was also mentioned.[23] There were also references to the creation of statistical systems relative to the population of prisoners (Olaeta, 2012) and to the construction of special facilities for juvenile and abandoned delinquent minors (reformatories and colonies) (*Programa de Derecho Penal 1934*).

Syllabuses corresponding to the first half of the 1940s are similar to the previous ones: the penitentiary question is almost absent though, paradoxically, the works written by professors in charge in those years highlighted the importance of this matter for Penal Law.[24] In 1943, in the syllabus presented by the chair of Ramos (which included Emilio C. Díaz and José María Paz Anchorena as extraordinary professors), Section XI had the title "About penalties in general." It included references which were absent in previous years, e.g., the death penalty (doctrinal discussion and Argentine precedents); corporal penalties; pecuniary penalties (doctrine and fines in the Argentine Penal Code) and "Repair of damages,

[23] Among other regulations, Act 11.833 created the General Bureau of Penal Institutions.

[24] For example, in the *Treatise on Penal Law* by Eusebio Gómez, published in 1939, in the third chapter, entitled "Relations between Penal Law, other branches of Law and other disciplines," the author remarked: "...the function of Penal Justice is not fulfilled by merely imposing the sanctions prescribed in the law. The enforcement of such sanctions forms part of that function. There exists a penitentiary technique which must be strictly observed so that the function of Justice be satisfied according to the law. *Thus, the penitentiary technique and Penal Law are intimately related*. To avoid quoting again the scientific tenets of the positive school, we should recall that when the International Union of Penal Law, founded in 1889 by Von Liszt, Van Hamel, and Prins, stated in its agenda: 'Since the courts of law and the prison administration concur to the same objective and, since the penalty is not valid unless it is properly enforced, the divorce established in our modern law system between the repressive function and the prison function is irrational and dangerous.'" (our emphasis). See (Gómez 1939, 116-7).

proposed measures to bring it to effect. Argentine law." In Section XIII, about "Argentine establishments," there was a reference in topic 6 to "Institutions for the enforcement of Article 34, paragraph 1 of the Code. Main security measures and existing or planned institutions mentioned in the doctrine and universal legislation." In the year 1944, the chair was in charge of Emilio C. Díaz and Alfredo J. Molinario, in our opinion for political reasons. Juan Silva Riestra was appointed as extraordinary professor and Hipólito Jesús Paz as adjunct.[25] Unlike former syllabuses, the one prepared for that year included a reference bibliography of outstanding national and international authors.[26]

Although we have not retraced yet what happened in the chairs of Ramos and Gómez (we hope to bridge this gap when we obtain access to their respective dossiers), we know that by 1949 there existed at least three different chairs of Penal Law,[27] namely: a) Penal Law – General Part, given in the second year of studies. The tenured professor was Carlos Fontán Balestra and the adjuncts, Humberto P J. Bernardi and Rodolfo G. Pessagno; b) Penal Law – General Part, Intensifying Cycle, sixth year, given by Hernán A. Pessagno; the adjunct professors were José E. Terza and Nicolás Alfredo Ramallo; and c) Penal Law – Special Part, Intensifying Cycle, sixth year. The tenured professor was Ricardo Levene Jr. and the adjuncts, Horacio Maldonado and Eduardo A. Ortiz (as we have said above, he was General Director of Penal Institutions until 1947, when he was replaced by Roberto Pettinato).

[25] We should recall that on June 4th, 1943 a military coup was carried out, and that in the subsequent months the new authorities took control of the universities (as well as trade unions, political parties, newspapers, etc.), and many professors were dismissed.

[26] Neither the year nor the publishing place was specified in the bibliographic references, which included the following titles: Enrique Ferri, *Principi di diritto criminali*; Francisco Carrara, *Programa parte general*; Enrique Pessina, *Elementos de derecho penal*; *Enrique Ferri, Sociología criminal*; *Rafael Garófalo, Criminología*; *Franz Von Lisi, Tratado de derecho penal*; *Emilio Brusa, Prolegómenos de Derecho Penal*; *Eugenio Florian, Parte Generale del Diritto Penale*; *R. Garraud, Traité de droite penal*; *Rodolfo Rivarola, Derecho Penal argentino*; *José Ingenieros, Criminología*; *Ramos, J.P. Curso de derecho penal*; *Rodolfo Moreno, El código penal y sus antecedentes*; *Octavio González Roura. Derecho Penal*; *Sebastián Soler, Derecho penal argentino*; *Eusebio Gómez, Tratado de derecho penal.*

[27] With respect to the 1948 syllabus of Penal Law II (fourth year) when Alfredo J. Molinario was the tenured professor and the adjuncts were Horacio José Malbrán and Norberto P. J. Bernardi, no reference was made to prisons. We could not locate this chair in subsequent years.

In the chairs led by Pessagno and Levene Jr. no mention to gaoling matters may be found.[28] On the other hand, several references were detected in Fontán Balestra's syllabus, which was organised into five units: 1) Methodological preliminaries; 2) Dogmatic discussion of the penal legislation; 3) The offender; 4) The offence; and 5) The sanction. Item "c" in this latter unit mentioned "Penalties involving the deprivation of freedom"; the contents and character of ancient and modern penal law is analysed therein as well as different imprisonment systems –Philadelphia, Auburn, the Progressive system, reformatories, and penal colonies–, prisons for adults, women, and minors. After analysing penalties that involve the deprivation of freedom in the Argentine Penal Code (incarceration, imprisonment, house arrest), the reality of the penitentiary system in our country is examined by describing the existing facilities (both those under the General Bureau of Penal Institutions and those dependent on provincial governments); the prison regime is also analysed: work (compulsory condition; different ways of exploitation, compensations, the allocation of the inmates' remunerations, etc.); religious and instructive education; and discipline (infringements and sanctions). About the life of inmates once released, the syllabus examines the functions of welfare boards for released inmates (a key element when they leave the prison) and later on analyses the reforms that Act 11.833 introduced into the Penal Code; the parole system –its fundamentals, doctrine, comparative legislation, obligations and benefits as compared with the prerogative of mercy, etc. The new Penal Code bills proposed in 1937 and 1941 are also examined. Finally, other types of penalties and security measures are reviewed (Programa de Derecho Penal 1949).[29] With

[28] However, the journal *Revista Penal y Penitenciaría* (official organ of the penitentiary forces) was mentioned in the bibliographical references of Pessagno's syllabus.

[29] In 1949, Fontán Balestra published a handbook as a guide for this course. It contained several topics relative to the question of prisons, especially "About penalties in particular," where he included the death penalty and corporal punishments, both of which affect freedom, and he also pays attention to the *early times* of penitentiary systems. About prison regimes, he states that "...in fact, there is no regime that we may consider typical because each system has one of its own, aimed at attaining the end in view for the sentence. Despite the diversity of such regimes, most of them share two or three common elements: work, instruction, and discipline, with the complement of welfare boards for released inmates" (Balestra 1949, 123).

respect to prisons, the 1953 syllabus (the last one we could locate) contains the same topics of the 1949 syllabus (Programa de Derecho Penal 1953).

What can we say about the situation at the University of La Plata?

As we have already explained at the beginning of this paper, we have not yet determined the situation of Penal Law chairs when the School of Legal and Social Sciences was created at La Plata in 1906. By 1913, at least two such chairs existed: a) Penal Law – Critical Doctrine and Comparative Legislation (tenured professor, Rodolfo Rivarola) and b) Argentine Penal Law – Professional Course (lecturing substitute professor, Octavio González Roura).

In Rivarola's syllabus, the question of gaoling was included in Topic II: "The current state of Argentine penal policies," where he analyses the design of penal laws, the situation of the Police, the Courts, and penal establishments. Besides, in Topic III, "A critical review of current conditions," he remarks the existence of many different penal codes, the diversity of procedures, the existence of different police forces, and the "inconsistency of imprisonment systems."[30]

The syllabus prepared by González Roura consisted of eight units, among which we should note these: "Analysis of the National Constitution as a source of Penal Law," and "The background and development of Argentine Penal Law." He also mentioned penal liability, the classification of crimes (against life and against property) and the problem of criminal identification and recidivism. Gaol matters were included in unit IV: "The system of penalties according to laws currently in force," where he analysed how sentences were served and examined internal regulations at the National Penitentiary of Buenos Aires, the Prison of Sierra Chica, and those in force at departmental establishments in the Province. Under the heading "Observations" about the orientation of his course, González

[30] Under the heading Objectives, the syllabus aimed at: 1) Determining the foundations for a national organisation of penal policies; 2) Analysing the possibility of an international organisation, and 3) the thesis. About this point, the following explanation was given: "the present syllabus has been conceived as a research on penal questions from the legislative point of view. It assumes that each student should consider himself as a legislator. The last item, entitled "the thesis" is not further specified at present: it should be filled in with the affirmative propositions resulting from each student personal inquiry" (Organización Judicial, 1913).

Roura declared: "...I do not precisely intend to teach Penal Law; I intend to teach how any subject relative to Penal Law should be studied." Accordingly, he suggested that students should have direct access to legal texts, official registries, and relevant documents in order to support their conclusions. In line with this orientation, G. Roura stated that the enforcement of penalties involving the deprivation of freedom "...should be learnt through the personal inspection of penal establishments by the students or through reports of student commissions when not all of them can be present at the inspection. The same may be said with respect to the internal regulations of prisons: students should not limit themselves to reading these regulations; they should come to know how prison regimes are effectively enforced either through personal observation, or through the written testimony of other students who have been there. In order that such observations may be properly made, the corresponding authorization from public authorities will be requested. Inspection trips will be charged in the budget to General Expenses" (Organización Judicial, 1913).

In subsequent years, Rivarola's and González Roura's syllabuses did not suffer substantial changes. In the case of Rivarola, the following addition should be noted in the 1915 syllabus: "Organisation of penal policies in Argentina. The 1914 Penitentiary Congress" (Programa de Derecho Penal 1915).

Ten years later, the enthusiastic first drive for a knowledge derived from the direct acquaintance of the students with penal establishments and their regulations was totally spent. Thus, the 1924 syllabus of the subject given by González Roura —now entitled "Penal Law and Prison Systems"— comprised 31 sections, of which only one (Section 17) referred to the "Enforcement of the sentence" and included the topics "The imprisonment regime"; "Different systems," "What the law establishes about this." Section 18 included an isolated reference to the Welfare Board for Released Inmates (Programa de Derecho Penal 1924).[31]

[31] In that period, González Roura (tenured professor and member of the Chamber of Appeals for Criminal and Correctional Matters at the Federal Capital) published a Treatise of Penal Law. In the second volume, chapter XXIII, when speaking about the question of prisons, he remarked that the penalty regime was "...the practical organisation of the sentence relative to its enforcement, so that the sentence may satisfy its preventive function through the

In 1926, new professors occupied the chair of Penal Law and Prison Systems: Justo P. Luna and José Peco. The interest in the penitentiary question seemed to flourish again. Thus, in sections XVII and XVIII of the syllabus, relative to the "Enforcement of penalties," we remark the following topics, among others: "How sentences are enforced at penal establishments"; "The Code and the prison regime"; "The population of penal establishments: the problems it arises"; "Need for special facilities and proper buildings"; "Prison facilities. Hygiene." "Our penal establishments, gaols, and people sentenced in the provinces." An interest may also be observed in the authorities of penal establishments, their personnel, and their internal regulations (especially in the case of the National Penitentiary), as well as in the three main media to *regenerate* the inmates (work, education, discipline). Besides, a new concern emerged which would partially become a reality some years later: the advisability of unifying penal establishments and creating identification bureaus.

In the following five years, Luna and Peco's syllabus remained almost unchanged in this aspect. In 1931, some months after the military coup of José Félix Uriburu, the new government authorities took control of the School of Legal and Social Sciences. As a consequence, José Peco resigned (or was dismissed?), and Ladislao Thot occupied his chair. However, the syllabus remained almost unaltered and Peco returned as lecturer as soon as 1934.

By 1937, Peco was mentioned as substitute professor (no reference to a tenured professor was made) and the assistant professor was Francisco P. Laplaza. The penitentiary question was scarcely mentioned. From 34 sections that constituted the syllabus only section 32 included relevant topics, such as "Prison regime: 1 History. 2. The Philadelphia system. 3. The Auburn system. 4. The Progressive system."[31] Parole was included in section XXIX. There were no references to any specifically penitentiary-related literature.

The same situation continued unaltered until the mid-1940s, with the exception of some new lecturers, like Luis Jiménez de Asúa, appointed as extraordinary professor. In the mid-1940s, the ascent of Peronism entailed some changes in the professorships involved (though not in the topics). Thus, in 1948, the tenured professor was Jesús Edelmiro Porto (no reference was made to other professors). His syllabus –the bibliography included– was identical to those of previous years.[32]

offender's reform with a view to his social readjustment." Besides, he stated that any such regime required two fundamental kinds of conditions: *material conditions* (architecture) and *moral conditions* (work, education, instruction, discipline), and that there were two possible attitudes [of the inmate]: "a negative one of shirking, or a positive one of compliance." Finally, after describing closed-door systems (Auburn, Philadelphia, Progressive system, praising the latter), he highlighted the importance of segregating the inmates, of distancing prisons from urban centres, and the positive results of penitentiary conferences held in the United States (Derecho Penal por Octavio González 1922, 315).

Defining Contents

Because of its nature, it is evident that the analysis of syllabuses – useful for seeing which topics were selected– is not enough to discern all their implications. Hence, in order to see more clearly the particular orientation of each proposal, other sources should be examined, among them, the textbooks used during the period under study, or the doctrinal work of the professors. We should also seek whether independent lectures about this subject have been documented, and investigate the interest the penitentiary question aroused among students who had to choose the subject for their doctoral dissertations.

In the case of Córdoba, and starting with Administrative Law, Félix Sarría's textbook had the largest readership. However, when we analyse different editions covering the period under study, we notice that the

[32] Although we must continue our research on this question, it should be noted that in 1947 eight research institutes were created at the National University of La Plata. The Institute of Higher Penal Studies and Criminology (created in 1945 by Jiménez de Asúa) was transformed into the Institute of Penal Law and Criminology, which comprised the following chairs: 1) Penal Law and the Prison System (Part I); 2) Penal Law and the Prison System (Part II); 3) Judicial Organisation and Penal Procedures, and/or related chairs included in the curriculum. Apparently, the institute headed by Jiménez de Asúa did not show any special interest in the question of prisons. For example, the following curricular subjects were given during 1945 (none of them dealing with prisons): Criminal Sociology (Alfredo Molinario); Penal Laws (Jiménez de Asúa); Penology (Francisco Laplaza); Criminal Procedural Law (Niceto Alcalá Zamora); Forensic Medicine (José Belbey); Special Part of Penal Law (Crimes against Honour, José Peco); Forensic Psychiatry (Nerio Rojas and R. Ciafardo), and Criminology (Osvaldo Loudet).

problem of prisons was not specifically discussed, although it was one of the topics mentioned in the syllabus (Sarria 1938).[33]

As regards Judicial Organisation and Penal Procedures, one of the first works that may be considered as a textbook was that of Alfredo Vélez Mariconde, since Julio B. Echegaray and Ernesto S. Peña did not write works of a general character.[34]

Vélez Mariconde published his *Estudios de Derecho procesal Penal*[67] in 1956, after the period we are studying. However, in 1942 he wrote a book of a general scope entitled *Los principios fundamentales del proceso penal según el Código de Córdoba*.[68] Some valuable considerations in that book let us see that the enforcement of the sentence was gaining greater density from the juridical point of view as a result of laws recently sanctioned and the influential thought of one of their authors. A confirmation of this trend may be seen in how Vélez Mariconde characterised the phase of enforcement in the legal procedure:

> "The irrevocable legal sentence is the end of the trial itself, but it does not put an end to jurisdictional activity. (...) The guilty verdict demands the enforcement of the penalty, an action that pertains to the jurisdictional organ that pronounced the sentence (...). With this final pronouncement starts the third phase of the repressive function: enforcement. Thus the penal law is practically accomplished through an administrative activity" (Vélez Mariconde 1956, 3371).[35]

[33] Horacio Ahumada, who was tenured professor and included again in the 1952 syllabus contents relative to the penitentiary question, did not write a textbook on this subject and published, instead, works on how the financial activities of the Nation, the provinces, and the towns were outlined in the Argentine constitutional order, as well as on other questions such as public expenses and federalism, but he did not write a general work. In fact, the 4th and 5th edition of the above-mentioned work by Sarría were published in Córdoba in 1950 and 1961 so that, during the whole period of Ahumada as tenured professor, Sarría's *Derecho Administrativo* continued to be the textbook on this subject.

[34] In 1901, Echegaray published his doctoral dissertation, entitled *Fuero federal*. With the exception of some monographic works (e.g., "El sistema oral en el proceso civil." en *Homenaje al Doctor Sofanor Novillo Corvalán*. Universidad Nacional de Córdoba, 1941), he did not prepare a general course. With respect to Peña, our search for publications was unsuccessful.

[35] This work was published as a book and, simultaneously, as a paper in *Jurisprudencia Argentina*, 1942 - IV - 13 and ff. This paper was republished in (Bertolino 2013). Quotations here were extracted from this reedition.

This paragraph highlights the jurisdictional character of the incidents resulting from the enforcement of a sentence that entails the deprivation of freedom although, naturally enough, it also acknowledges that the practical enforcement of the sentence pertains to the penitentiary authority (Vélez Mariconde 1956, 3371).

From which point of view were prison-related contents analysed in the syllabuses of Penal Law?

As we have seen, a whole series of tenured and substitute professors occupied that chair at Córdoba. Their written production was uneven: some of them (Moyano Gacitúa and Sebastián Soler) published works of a general character; others, like Rodríguez de la Torre, published some partial topics of their courses, while the written production of Pablo Mariconde was still more fragmented and restricted.[36]

In 1899, Moyano Gacitúa published his general work on this subject (Moyano Gacitúa 1899). Four chapters were devoted –though not exclusively– to the different species of freedom deprivation sentences, and institutions related with the penitentiary question. Thus, in Chapter II (Second Part) the author dealt with incarceration, he remarked its advantages and also treated the penalty of penitentiary; in Chapter III he analysed penal colonies, and in Chapter V he outlined the main criteria to determine the length of the sentence. He also analysed in that chapter some institutions, like parole and, finally, in Chapter VI he discussed in detail the penalties of imprisonment and arrest.

How may the treatment of such questions by this author be described?

His argumentation may be characterised by the absence of concerns about the regulations of these penalties in the Penal Code, by a powerful discussion of the philosophical and sociological aspects involved, and a description of some comparative systems. In fact, Moyano Gacitúa was not mainly concerned with the questions of legal interpretation that the judicial

[36] The title of Pablo Mariconde's doctoral dissertation was: *La teoría de los pactos sobre sucesión futura en los códigos argentino y alemán*. It was a work on Private Law from a comparatist point of view. However, Mariconde did publish later some works on Penal Law. Among them, the following: "El error en el Derecho penal y civil argentino" (Vélez Mariconde 1927); "La idea del tipo criminalis y el principio de la evolución" (Vélez Mariconde 1936); "La causalidad jurídica en el derecho civil y penal argentino" (Vélez Mariconde 1947) y "La estructura jurídica del crimen" (Vélez Mariconde 1947).

praxis might give rise to; he was rather concerned with –often critical– appreciations of certain institutions. For example, when he referred to the penitentiary penalty, he remarked: "As we have said, the *desideratum* of penalties is that the criminal be seized by society, that he be sequestered for a period of time, so as to be moralized and put to work in order to pay what he consumes and compensate the victim. Two remarks may be made about this: first, if incarceration under such conditions was formerly deemed the ideal penalty for the future, nowadays it cannot be considered in the same way: the dishonour involved in forced labour does not apply to all criminals because of the distances between the various social classes that today's society admits and even encourages. Another question to be considered is where and how to sequester the criminal so that he may be moralized and put to work: should he be sequestered in penal institutions (confinement establishments, penitentiaries, reformatories)? Should he be incarcerated in penitentiary colonies? Or, lastly, should he be assigned to public labour, wherever it exists? This is the crux of the matter today, and to solve it we should consider, first and foremost, the essence of the penalties; then, financial and economic reasons of good management as well as the nature of the public labour involved; secondly the economic questions and those of moral and physical hygiene; the conditions of agricultural work in rural areas and in open air, and, finally, considerations inherent to the inmate as regards public labour outside penal establishments to be performed in public places" (Moyano Gacitúa 1899, 266). Moyano Gacitúa's approach when he examined the "financial side" of the inmate's work is worth noting, since prisons cannot be financed by that work. Following that line, the author embarked in a study of the budgets assigned to the penitentiary system in Italy, France, and Australia, as compared to the benefits obtained from the inmates' work (Moyano Gacitúa 1899, 268-273). The use of comparative data is also noticeable when Moyano Gacitúa deals with penal colonies and gathers data from France, Belgium, Holland, England, Germany, the United States, and Switzerland (Moyano Gacitúa 1899, 277).

This type of analysis was characteristic of the main doctoral dissertation works submitted between 1885 and 1911.[37]

Aliaga Pueyrredón's dissertation, for example, contained 43 pages, it was preceded by an introduction and divided into three numbered sections. The author described his work as follows: "(...) in the first [section] we deal with the various penal establishments already known, analysing each and remarking which is the best in our opinion; in the second section we consider national and provincial systems applied in our country and study their advantages and drawbacks. In the last section, as a kind of epilogue, we discuss the practical advantage for some provinces to join forces in order to establish and finance prisons; an effort which, at this stage, might result in common advantages that reflect their culture and civilization" (Aliaga Pueyrredón 1905, 4-5).

This paragraph shows the survival of a research style where no place was assigned to the juridical analysis of the penal law and the problems it entails.

When Julio Rodríguez de la Torre was tenured professor, there were no significant changes in the way of researching the prison-related topics included in the syllabus. As we have said, De la Torre did not write a general work on the subject but he published his lectures at the university in several issues. They were included in various numbers of the journal *Revista de la Universidad Nacional de Córdoba*. Thus, a long paper entitled *Derecho Penal. Lecciones del Profesor Julio Rodríguez de la Torre. De acuerdo al programa oficial de la Facultad de Derecho y Ciencias Sociales de la Universidad Nacional de Córdoba (Curso de 1924)* was published in 1924 (Rev. Universidad Nacional de Córdoba 1924, 3-37).

It was perhaps during this period, when Rodríguez de la Torre was the tenured professor, that the lecturing team of Córdoba identified itself most with the scientific tenets of juridical positivism. The other face of this theoretical affiliation was that scarce attention was paid to the study of

[37] During this period, the following dissertations on penitentiary questions were submitted: Del Prado (1911); López Iriarte (1911); Bollini (1885); Lozada Llanes (1911) y Aliaga Pueyrredón (1905).

Penal Law understood as the system of legal norms that regulates the punishing power of the State.

Indeed, in the work we have just mentioned, Rodríguez de la Torre defined Penal Law as "the broad study of crime, of repression, of the offender and of his liability: in other words, of the individual (anthropology) and social (sociology) causes that engender crime, and also of the causes that may reduce or mitigate it (prevention). The individual causes comprise criminal biology and anthropology, and the social causes include all factors of a general order: the economy, the environment, etc." (Rodríguez de la Torre 1924, 5).[38]

But what does this author understand by Penal Law?

According to him, Penal Law is a corollary of penal science. "It receives its insights and brings them into existence" (Rodríguez de la Torre 1924, 9). For that reason, he proposed an interdisciplinary method for the study of Penal Law, which included among its auxiliaries "the disciplines devoted to the study of penal establishments and penitentiaries," among them Penology. According to Paul Cuche's (Cuche 1905, 1) definition, quoted by Rodríguez de la Torre, Penology of the Penitentiary Science "has the purpose of studying the functions the penalty must fulfil in modern societies, and of organising practically the adaptation of the penalty to such functions" (Rodríguez de la Torre 1924, 18). The author further remarked that Penology is not limited to the study of prisons (which constitutes the Penitentiary Science *scricto sensu*) but comprises "all the diverse penalties" as well as security measures (Rodríguez de la Torre 1924, 19). This discipline is further combined with the study of post-prison and post-asylum institutions. Again, we may notice that the strictly juridical and normative analysis of penalties entailing the deprivation of freedom has a very low impact on this conception.

It should be noted that, acting on his own initiative, Rodríguez de la Torre invited Eusebio Gómez, then Director of the National Penitentiary,

[38] Immediately, the author added: "Our conception of the penal science might be expressed by saying that it consists of the study of: the aetiology of crime; b) crime prevention; c) the penalty, its origin, fundamentals, purpose and form; d) liability (examined according to various schools of thought as regards free will, fatalism, and determinism)" (Rodríguez de la Torre 1924, 5).

to deliver a lecture at the University of Córdoba about the "Prison regime." The lecture was delivered on August 10th, 1927, preceded by an introduction by De la Torre, who emphasized the purpose of his invitation thus: "It is a pleasure to hear the words of such a distinguished specialist in penal law, which will undoubtedly help to improve our penal institutions ..." (Conferencia 1927, 176). He later stressed the work of the invited jurist at the institution he managed: "Thoroughly imbued in the subject, Professor Gómez undertook to direct the only penal establishment existing in our country, and he took office after an administrative crisis that shattered many of the management tools of the regulations themselves. Before that crisis, Antonio Ballvé had ranked Buenos Aires Penitentiary among the most renowned penal institutions in the world. During his visit to our country, Enrique Ferri made the highest possible praise of the institution, when he said that it was the best in South America. Nowadays, Eusebio Gómez, who carries on Ballvé's patriotic work, takes that prison back to the place it formerly had by introducing in it the scientific methods and systems of our times" (Conferencia 1927, 177-178).

We have already said that Pablo Mariconde left a fragmented bibliographic production and that, as far as we know, he did not write a work of a general character neither did he express in his papers a central concern for the problem of prisons. However, we have seen that in the reference bibliography suggested in the subsequent versions of his syllabus, he included a work by Luis Jiménez de Asúa, *La ley y el delito (Law and Crime)*, published in 1945. This is relevant because the selection of reference works for the students may suggest the orientation that the chair team sought to impart to the contents. In Asúa's work there is an appreciation that shows he was rather sceptical —for his time— with respect to the juridicity of questions related to the enforcement of penalties that entail the deprivation of freedom: "I don't think —he wrote— that penitentiary precepts are ripen to assume the prestigious title of Law, but it cannot be denied that we, jurists, are progressively getting rid of questions related to the enforcement of the penalty (...)" (Mapelli Caffarena 1986, 458).

Sebastián Soler was one of the substitute professors who accompanied Mariconde. In 1940, he published the general part of his *Derecho penal argentino (Argentine Penal Law)*, divided into two volumes (Soler 1940). Unlike other lecturers we have mentioned, Soler became the first and most steadfast opponent of the Italian criminological positivism and its postulates. With varying nuances, that doctrine had been the dominant scientific conception in the chair of Penal Law at the University of Córdoba, especially when Rodríguez de la Torre was tenured professor, and also with Mariconde, though the latter was more open to other perspectives (Cesano 2012, 159).

How did Soler's work change the prevailing atmosphere of ideas?

First of all, it should be noted that the influence of his book was not felt at once; it increased progressively. This remark implies that we should not seek an immediate effect of this work on the contents of the syllabus at Córdoba. That change would occur later, when the author was already settled in the city of Rosario. However, we cannot deny that his seminal work was conceived at Córdoba and that the first followers of this new way of thinking the Penal Law were people from Córdoba (such was the case of the jurists Ricardo C. Núñez and Ernesto Roque Gavier).

In contrast to the ideas of criminological positivism, we may say in general that Soler's book implied a change of paradigm with respect to the then current ways of analysing and teaching Penal Law. Indeed, in his prologue to the first edition, Soler detached himself from every attempt to dilute Penal Law as a sort of chapter of an inclusive criminal sociology (according to Ferri's ideas), and he emphasized the need to turn one's eyes to the text of the law: "Law may be examined dogmatically, critically, historically, philosophically, and so on: there are numberless viewpoints. What is important for us is to state that, by using over-elaborate language, the dogmatic construction should not be confused with extra-normative appreciations, with personal opinions, with theories that spurn the law. The law and our own opinion about it are different matters; whenever they differ, nobody will prevent us from expressing what we think, but we should know how to discern between the law itself and our mere wishes (...). There is a sociological motivation that spurred us to undertake this task from such a perspective: the need to confer prestige to the law, to encourage respect for it. Repeated criticisms of the Penal Law entail a certain indifference to it (...). Law often appears as just another opinion among a number of theories, and an opinion, besides, which is not deemed sensible. Thus, instead of promoting efforts to depict the law in its highest sense, a kind of demolishing trend thrives, and we forget that, between the greatest treatise and the humblest law, there is a qualitatively unbridgeable gap" (Soler 1940, VIII).[39]

These opinions of Soler bring him close to the tenets of the juridical-technical school of the Italian Arturo Rocco[40]. In his cultural medium, Rocco introduced a new epistemological trend: "Like Karl Binding in Germany (...), Rocco constitutes an obvious turning point in the Italian doctrine, a manifest return to Law and to the methodology of closed juridical analysis—criminology is thus relegated to the state of an 'auxiliary science' (...)" (Fernández 2001, 32). Therefore, Rocco's work shows an unmistakable "reactive stamp, since he rises up against the intellectual atmosphere that prevailed in the Penal Law of his times, and repudiates what he perceives as improper philosophical and criminological intrusions promoted by the 'Scuola Positiva', which had succeeded in 'de-juridising' penal science almost completely (...)" (Fernández 2001, 32).

How was this new trend reflected on outlooks about penalties involving the deprivation of freedom?

It was reflected in the way Soler treated those penalties in the second volume of his *Derecho penal argentino*. For one thing, and consistent with his methodological proposal, the author refers constantly to legal texts when he analyses such penalties, thus trying to shed light on questions that might arouse some discussion in the juridical doctrine. This is especially noticeable when he studies the institution of parole, which tends to adapt the penalty to the individual (Soler 1940, 385-389). Of course, this does not mean that Soler omitted other topics present in the syllabuses and devoid of such a juridical density. On the contrary, he dedicated several

[39] About the influence of this work by Soler (Cesano 2010, 89-114).

[40] Enrique Bacigalupo acknowledges this in "Welzel y la generación argentina del finalismo" (Bacigalupo 2005, 20).

pages to the characterisation of penitentiary systems, inspiring himself in the book by Cuche we mentioned above (Soler 1940, 380-383). Nevertheless, we notice here one of the first attempts to 'juridise' the enforcement of penalties involving the deprivation of freedom.

Conclusion

This analysis we have made authorises some conclusions. As we have said, they are preliminary conclusions because the study of all the variables included in our plan demands much more space. From another point of view, some of the paths suggested should be retraced, since the search for primary sources does not allow yet a final reconstruction. However, some aspects emerge from our research up to now, which will be summarised in the following paragraphs.

First, it does not seem that the penitentiary problem was very important during the period under study in the curricular contents for the education of future jurists. It is a paradoxical situation because, in the case of the University of Buenos Aires, several professors held the highest hierarchical positions in penitentiary institutions (for example, Eusebio Gómez, José María Paz Anchorena, Juan P. Ramos, and Eduardo Ortiz).

Second, it is more or less clear that the contents of what is scientifically known as *Penitentiary Law* were mainly absorbed (given the slight importance of Administrative Law, rather limited to the University of Córdoba) by two subjects included in the curricula of Law Schools, namely, Penal Law, and, to a lesser extent, Judicial Organisation and Penal Procedures (later Criminal Procedural Law). This shows that Penitentiary Law lacked real autonomy, at least pedagogical autonomy.

A joint reading of our sources –which, to a certain extent include textbooks of common use in the period, besides syllabuses themselves– helped us define more sharply the profile of the topics included in each syllabus. It was also evident that, as of 1940, a new matrix for dealing scientifically with Penal Law emerged, which would be important to define the topics to which future jurists interested in the penitentiary question

should pay the greatest attention. In effect, by 1926, one of the first objections to criminological positivism was formulated in the University of Córdoba, when Sebastián Soler published his doctoral dissertation.[41] However, it was not until the first edition of his *Derecho penal argentino*, in 1940, that a rather clear model for studying Penal Law was proposed, different from the previous ones both from the point of view of pedagogy and research. The turning point involved in Soler's work let us see clearly two periods: a first one under the marked influence of the *Scuola positiva*, where the penitentiary question was given a sociological turn that practically left no place for discussions or normative developments related to the legal regulations contained in the successive Penal Codes and complementary penitentiary legislation. In the other period, subsequent to Soler's work, the analysis of the penal and penitentiary law became progressively more important. From then onwards, more attention was paid to juridical problems derived from legal texts, crystallized around certain particular institutions (e.g., parole). Besides this change of epistemological paradigm, another factor that contributed to the examination of penitentiary institutions from a more juridical point of view was the sanctioning of the provincial Procedural Code of Córdoba, written by Sebastián Soler and Alfredo Vélez Mariconde. The act of defining the time when the penalty is enforced as a genuine phase of the penal procedure, as well as establishing the necessary participation of the jurisdictional function, was an additional factor tending to confer greater density to the juridical dimension of penalties involving the deprivation of freedom, and also to the normative discipline that deals with them.

We have already said that this is a first step of a larger project. It is necessary to repeat this because, although the tendency to 'juridise' the penalty of deprivation of freedom is, in a certain sense, a positive development as compared to discretionary penitentiary practices, it is also necessary to examine other subjects that deserve preferential attention in the future. We refer to the acceptance in our Administrative Law of the German doctrine about special relations of subjection, a question that

[41] Entitled *La intervención del Estado en la peligrosidad predelictual* (1926). With respect to this, Cesano (2011, 65).

requires, in its turn, another investigation: to what extent that doctrine was included in our penitentiary juridical knowledge and, if so, whether it had consequences on the professional training of the agents and cadres of the penitentiary system.

APPENDIX

Table 1. Tenured professors of Penal Law (1887-1955)[42]

University of Buenos Aires	National University of La Plata	National University of Córdoba
1887-1897: Norberto Piñero (Osvaldo M. Piñero)	1913 (?)-1923: Argentine Penal Law. Octavio González Roura.	1885: José Del Viso
1897-1921: Osvaldo M. Piñero (Tomás R. Cullen/Rodolfo Moreno Jr. /Enrique B. Pruck)	1913 (?)- (?): Penal Law (Doctrine and Comparative Legislation). Rodolfo Rivarola.	1886-1905: Cornelio Moyano Gacitúa.
1925-1943: Eusebio Gómez (Emilio C. Díaz/ Juan Silva Riestra/Alfredo J. Molinario)	1924-1925: Penal Law and Prison Systems. Octavio González Roura (Justo P. Luna)	1906-1925: Julio Rodríguez de la Torre.
1929 (?)- 19 (?) Juan P. Ramos (Emilio C. Díaz/José María Paz Anchorena)	1926-1930: Penal Law and Prison Systems. Justo P. Luna (José Peco).	1926-1952: Pablo Mariconde (Sebastián Soler)
1944: Emilio C. Díaz- Alfredo Molinario (Hipólito Jesús Paz)	1931-1933: Ladislao Thot.	
1945: Juan P. Ramos (Emilio C. Díaz/José María Paz Anchorena)	1934: José Peco (Justo P. Luna-Ladislao Thot).	
1948: Alfredo J. Molinario (José Malbrán/Humberto P. J. Bernardi	1937: José Peco (Francisco P. Laplaza).	
1949: Carlos Fontán Balestra (Humberto P. J. Bernardi/Rodolfo C. Pessagno)	1939: Francisco P. Laplaza.	
1949: Hernán A. Pessagno (José E. Terza/Nicolás Alfredo Ramallo)	1940-1943: José Peco (Luis Jiménez de Asúa- Francisco P. Laplaza).	
1949: Ricardo Levene - h- (Horacio Maldonado/Eduardo A. Ortiz)	1944-1946: José Peco (Luis Jiménez de Asúa)	

[42] Between brackets, the names of substitute professors along this period.

University of Buenos Aires	National University of La Plata	National University of Córdoba
1953: Carlos Fontán Balestra (Humberto P.J. Bernardi/Rodolfo C. Pessagno)	1948: Jesús Edelmiro Porto.	
1953: Alfredo J. Molinario (Horacio Malbrán/Hipólito J. Paz/Ismael Gelsi)		

Table 2. Related Subjects

University of Buenos Aires	National University of La Plata	National University of Córdoba
1923: Criminal Law and Procedures. Jorge Coll.	1913: Judicial Organisation and Penal Procedures. Joaquín Carrillo.	1925: Judicial Organisation and Penal Procedures Julio B. Echegaray.
	1926: Judicial Organisation and Penal Procedures. José Pedro Pellegrini (Juan E. Lozano)	1930: Judicial Organisation and Penal Procedures. Ernesto S. Peña.
		1930: Administrative Law. Félix Sarría
		1937: Criminal Procedural Law. Alfredo Vélez Mariconde.
		1952: Administrative Law. Horacio Ahumada.

TRANSLATORS' NOTE

The terms *presidio*, *penitenciaría* and *prisión* are names of penalties which used to be differentiated by their severity. The same is true of the difference between *prisión* and *reclusion*. These legal distinctions are no longer in force in current Argentine law. The correspondence between the English translations and these terms is as follows:

Translation used	Term in Spanish	Description
Confinement with forced labour	*Presidio*	Confinement and forced labour in public, outside the premises of the penal establishment.
Penitentiary	*Penitenciaría*	Confinement and forced labour within the premises.
Incarceration	*Reclusión*	Confinement with mandatory labour.
Imprisonment	*Prisión*	One to three-year sentences.

References

Aliaga Pueyrredón. 1905. *Prisiones.* Imprenta Argentina. [*Prisons.* Printing Argentina].

Apuntes de Derecho Penal. 1921. *Conferencias dadas en la Facultad de Derecho y Ciencias Sociales por el profesor de la materia Doctor Juan P. Ramos.* [*Notes of Criminal Law.* 1921. *Conferences given in the Faculty of Law and Social Sciences by the professor of the matter Doctor Juan P. Ramos*]. Versión taquigráfica tomada por Isauro P. Argüello (hijo), Buenos Aires: Imprenta Caracciolo y Plantié.

Archivo Histórico de la Facultad de Derecho. Universidad Nacional de Córdoba. (AHD.UNC) 1885. *Libro 200001. Programa de Derecho Penal para el año 1885* [*Book 200001, Criminal Law Program for the year 1885*].

_____. 1886. *Libro 200001. Programa de Derecho Penal para el año 1886.* [*Book 200001. Criminal Law Program for the year 1886*].

_____. 1915. *Libro 200021. Programa de Procedimiento Teórico Práctico en lo Criminal.* [*Book 200021. Program of Practical Theoretical Procedure in Criminal Matters*].

_____. 1916. *Libro 200021. Programa de Derecho Penal, Curso de 1916.* [*Book 200021. Criminal Law Program, Course of 1916*].

_____. 1920. *Libro 200023. Programa de Derecho Penal.* [*Book 200023. Criminal Law Program*].

_____. 1925. *Libro 200028. Programa de Derecho Penal.* [*Book 200028. Criminal Law Program*].

_____. 1925. *Libro 200030. Programa de Organización Judicial y Procedimientos Penales.* [*Book 200030. Program of Judicial Organization and Criminal Procedures*].

_____. 1926. *Libro 200029. Programa de Derecho Penal.* [*Book 200029. Criminal Law Program*].

_____. 1927. *Libro 200030. Programa de Derecho Penal.* [*Book 200030. Criminal Law Program*].

_____. 1928. *Libro 200033. Programa de Derecho Penal.* [*Book 200033. Criminal Law Program*].

_____. 1929. *Libro 200031. Programa de Derecho Penal.* [*Book 200031. Criminal Law Program*].

_____. 1930. *Libro 200034. Programa de Derecho Administrativo, Curso de 1930* [*Book 200034. Administrative Law Program, Course of 1930*]. Bolilla 9.

_____. 1937. *Libro 200039. Programa de Organización Judicial y Procedimientos Penales.* [*Book 200039. Program of Judicial Organization and Criminal Procedures*].

_____. 1940. *Libro 200048. Programa de Organización Judicial y Procedimientos Penales* [*Book 200048. Program of Judicial Organization and Criminal Procedures*]. Bolilla 11.

_____. 1941. *Libro 200048, Programa de Derecho Penal.* [*Book 200048, Criminal Law Program 1941.*]. Historical Archive. Law School, National University of Cordoba. 1941.

_____. 1947. *Libro 200048. Programa de Derecho Penal (Primer Curso).* [*Book 200048. Criminal Law Program (First Year)*].

_____. 1952. *Libro 200046. Programa de Derecho Administrativo.* [*Book 200046. Administrative Law Program*].

_____. 1952. *Libro 200047. Programa de Derecho Penal I.* [*Book 200047. Criminal Law Program*].

Arocena, Gustavo. 2014. *Principios básicos de la ejecución de la pena privativa de la libertad* [*Basic principles of the execution of the deprivation of liberty*]. Buenos Aires: Ed. Hammurabi.

Bacigalupo, Enrique. 2005 Welzel y la generación argentina del finalismo [Welzel and the Argentine generation of finalism]. En *Hans Welzel en el pensamiento penal de la modernidad, dirigido por* Hans Joachim Hirsch, José Cerezo Mir, Edgardo Alberto Donna. Santa Fe: Rubinzal - Culzoni Editores

Bergamini Miotto, Armida. 2001. Derecho Penitenciario. Elías Carranza et al. (coord.) *Política criminal, Derechos Humanos y Sistemas Jurídicos en el Siglo XXI. Volumen de Homenaje al Prof. Dr. Pedro R. David.* [*Criminal Policy, Human Rights and Legal Systems in the 21st Century Volume of Tribute to Prof. Dr. Pedro R. David*]. Buenos Aires: Ed. Depalma.

Bertolina, Pedro. 2013. *Summa Procesal Penal.* [*Summa Criminal Procedure*]. Tomo III. Buenos Aires: Ed. Abeledo Perrot.

Bollini, Carlos S. 1885. *Sistemas penitenciarios. La Época.* [*Prison systems. The Time*].

Cesano, José Daniel. 2012. Redes intelectuales y recepción en la cultura jurídico-penal de Córdoba (1900-1950) [Intellectual networks and reception in the legal-criminal culture of Córdoba (1900-1950)]. *Rechtsgeschichte-Legal History*, n° 20, 159-172.

_____. *2011.* Élites, redes intelectuales y recepción en la cultura jurídica de Córdoba (1900 - 1950). [Elites, intellectual networks and reception in the legal culture of Córdoba (1900 - 1950)]. *Córdoba: Ediciones del copista.*

_____. 2010. Sebastián Soler, la crítica al positivismo criminológico y el significado de su derecho penal argentino: saberes jurídicos y contextos intelectuales. Una aproximación desde la historia de las ideas [The critique of criminological positivism and the meaning of its Argentine criminal law: legal knowledge and intellectual contexts, an approach from the history of ideas.]. *Cuadernos de historia,* Academia Nacional de Derecho y Ciencias Sociales de Córdoba, Instituto de Historia del Derecho y de las Ideas Políticas, n° 20, 2010, 89-114. [

_____. 2003. *Estudios de Derecho Penitenciario* [*Penitentiary Law Studies*]. Buenos Aires: Ediar.

Conferencia del Dr. Eusebio Gómez 1927 [Conference of Dr. Eusebio Gómez. 1927]. *Revista de la Universidad Nacional de Córdoba,* Año 14 N° 5-6, Julio-Agosto, 1927, 177-178.

Cuche, Paul. 1905. *Traité de science et de législation pénitentiaires* [*Treaty of Science and Penitentiary Legislation*]. Paris: Librairie Generale de Droit et de Jurisprudence.

Curso de Derecho Penal. 1884. *Lecciones del Doctor Don Manuel Obarrio en la Universidad de Buenos Aires* [*Lessons by Doctor Don Manuel Obarrio at the University of Buenos Aires*]. Tomadas y publicadas por Mariano Orzabal estudiante de Jurisprudencia y Taquígrafo. Buenos Aires: Litografía, Imprenta y Encuadernación. La Unión, de Stiller & Laass.

Del Prado, José N. 1905. *Sistemas penitenciarios* [*Prison systems*]. Córdoba: La Minerva.

El error en el Derecho penal y civil argentine [The error in Argentine criminal and civil law], *Revista de la Universidad nacional de Córdoba.* Año XIV, N° 9 - 10, Noviembre - Diciembre de 1927.

Fernández, Gonzalo D. 2001. Presentación in Arturo Rocco, *El objeto del delito y de la tutela jurídica penal. Contribución a las teorías generales del delito y de la pena* [*The object of crime and criminal legal protection Contribution to the general theories of crime and punishment*], Buenos Aires: Ed. B de F Montevideo.

Fontán Balestra, Carlos. 1949. *Manual de Derecho Penal. Parte general* [*Manual of Criminal Law. General part*].. Buenos Aires: Editorial Depalma.

Gómez, Eusebio. 1939. *Tratado de Derecho Penal. Tomo I* [*Criminal Law Treaty. Volume I*]. Buenos Aires: Compañía Argentina de Editores Sociedad de Responsabilidad Limitada.

González Roura, Octavio. 1922. *Derecho Penal por Octavio González Roura. Parte General* [*Criminal Law by Octavio González Roura. General Part*]. Tomo 2. Buenos Aires. Abeledo Editor.

La causalidad jurídica en el derecho civil y penal argentine [Legal causality in Argentine civil and criminal law].. 1947. *Revista de la Universidad Nacional de Córdoba,* Año IX, números 3-4.

La estructura jurídica del crimen [The legal structure of crime].. 1947. *Revista de la Universidad Nacional de Córdoba,* Año IX, números 3-4.

La idea del tipo criminalis y el principio de la evolución [The idea of the criminal type and the principle of evolution. 1936]. *Revista de Psiquiatría y Criminología,* Año I, N° 5, Bs. As., septiembre-octubre de 1936.

Lariguet, Guillermo. 2006. *Dogmática jurídica y aplicación de normas. Un análisis de las ideas de autonomía de ramas jurídicas y unidad del Derecho* [*Legal dogmatics and application of standards. An analysis of the ideas of autonomy of legal branches and unity of law*]. Córdoba: Alveroni Ediciones.

López Iriarte, Ricardo. 1911. La pena y los sistemas penitenciarios [The penalty and the penitentiary systems]. La industrial.

Lozada Llanes. 1911. Sistemas penitenciarios [Prison systems]. La Industrial.

Mapelli Caffarena, Borja. 1986. La autonomía del Derecho Penitenciario. [The autonomy of the Penitentiary Law]. *Revista de la Facultad de Derecho de la Universidad Complutense*, Extra 11.

Moyano Gacitúa, Cornelio. 1899. *Curso de Ciencia Criminal y derecho Penal Argentino* [*Course in Criminal Science and Criminal Law in Argentina*], Buenos Aires: Félix Lajouane Editor.

Museo y Archivo Histórico de la Facultad de Derecho de la Universidad de Buenos Aires. (MyAH, FDUBA). [*Museum and Historical Archive of the Faculty of Law of the University of Buenos Aires*].

Olaeta, Hernán. 2012. El surgimiento de la estadística criminal en la Argentina [The emergence of criminal statistics in Argentina]. *Revista Voces en el Fenix*. N°15, Julio, 98-105. Disponible en: http://www.vocesenelfenix.com/content/el-surgimiento-de-la-estad%C3%ADstica-criminal-en-la-argentina

Organización Judicial y Procedimientos Penales. 1913. Universidad Nacional de La Plata. Facultad de Ciencias Jurídicas y Sociales [*Judicial Organization and Criminal Procedures*. 1913. National University of La Plata. Faculty of social and legal sciences]. La Plata: Talleres de J. Sese y Cía. La Plata: Workshops by J. Sese y Cía].

(PDP) Programa de Derecho Penal [Criminal Law Program]. 1888. Universidad de Buenos Aires.

_____. 1920. Universidad de Buenos Aires. [University of Buenos Aires].

_____. 1928. Universidad de Buenos Aires. [University of Buenos Aires].

_____. 1929. Universidad de Buenos Aires. [University of Buenos Aires].

_____. 1934. Universidad de Buenos Aires. [University of Buenos Aires].

Programa de Derecho Penal, cátedra Fontán Balestra. 1949. [*Criminal Law Program, Fontán Balestra cathedra*].

_____. 1953.

Programa de Derecho Penal (Doctrina y Legislación Comparada). 1915. [*Criminal Law Program* (Doctrine and Comparative Legislation)].

Programa de Derecho Penal y Régimen Carcelario. 1924. [*Criminal Law and Prison Regime Program*].

Programa de Legislación y Procedimientos Penales [*Program of Legislation and Criminal Procedures*]. 1923. Buenos Aires: Talleres Gráficos L. J. Rosso y Cía.

Proyecto de Código de Procedimiento Penal por los Dres. A. Vélez Mariconde y Sebastián Soler [*Draft Code of Criminal Procedure by Drs. A. Vélez Mariconde and Sebastián Soler*]. *1938*. Córdoba: Imprenta de la Universidad.

Rodríguez de la Torre, Julio. 1924. Derecho Penal. Lecciones del Profesor Julio Rodríguez de la Torre. De acuerdo al programa oficial de la Facultad de Derecho y Ciencias Sociales de la Universidad Nacional de Córdoba (Curso de 1924) [Penal Law. Lectures by Professor Julio Rodríguez de la Torre. In accordance with the official syllabus of the School of Law and Social Science of the University of Córdoba, (Course of 1924)]. *Revista de la Universidad Nacional de Córdoba. 1924*. Año 11, N° 4 - 5 - 6, Abril - Mayo – Junio, 3-37.

Sarría, Félix. 1946. *Derecho Administrativo* [*Administrative law*]. 2ª edición, Córdoba: Imprenta de la Universidad.

Siracusa, Francesco. 1935. *Istituzioni di diritto penitenciario* [*Institutions of penitential law*]. Milano: Hoepli.

Soler, Sebastián. 1940. *Derecho Penal Argentino* [*Argentine Criminal Law*], T° I y II, 1ª edición. Córdoba: Imprenta de la Universidad.

Tellez Aguilera, Abel. 2011. Novelli y su tiempo. Una aproximación a los orígenes y al concepto del Derecho Penitenciario [Novelli and his time, an approach to the origins and the concept of Penitentiary Law]. *Revista de Estudios Penitenciarios*, n° 255, 2011, Madrid.

Torres, Félix A. 2017. *Historia de la Facultad de Derecho en la Universidad Nacional de Córdoba* [*History of the Faculty of Law at the National University of Córdoba*], *T° III, 1881 – 1955*. Córdoba: Ediciones del Boulevard.

Torres, Jurjo. 1998. Globalizaeión e interdisciplinariedad: el curriculum integrado. [*Globalization and interdisciplinarity: the integrated curriculum*]. Madrid: Ed. Morata.

Vélez Mariconde, Alfredo. 1956. *Estudios de Derecho procesal Penal* [*Criminal Procedural Law Studies*], T° I y II. Córdoba. Imprenta de la Universidad.

BIOGRAPHICAL SKETCHES

Jorge Alberto Núñez

Affiliation: Consejo Nacional de Investigaciones Científicas y Técnicas - Instituto de Investigaciones de Historia del Derecho.

Education: Doctor en Derecho. Universidad de Valladolid. España.

Research and Professional Experience: Investigador del CONICET en el área de Historia del Derecho. Especialidad: Historia de las Prisiones-Derecho Penitenciario.

Professional Appointments: Investigador CONICET. Docente de Historia Social Argentina (Universidad de Buenos Aires-Facultad de Ciencias Sociales). Codirector de la Revista de Historia de las Prisiones. Secretario el Instituto de Investigaciones de Historia del Derecho (2015-2018).

Publications from the Last 3 Years:

1) 2018. "Juan José O' Connor: alma, mente y nervio del sistema penitenciario argentino," ["Juan José O'Connor: soul, mind and nerve of the Argentine penitentiary system,"] en *Revista de Historia del Derecho*, n°55 (en prensa).
2) Núñez, Jorge y Olaeta, Hernán. 2018. "Una disciplina en tiempos de revolución. La Historia del Derecho en la Universidad de Buenos Aires (junio-agosto de 1973)," ["A discipline in times of revolution. The History of Law at the University of Buenos Aires (June-August 1973)] en *Revista Electrónica del Gioja* (en prensa).

3) 2017. "Una primera exploración sobre los periódicos para la población carcelaria en la Argentina. Algunas observaciones sobre El Domingo (1938) y Mañana (1947)," ["A first exploration of newspapers for the prison population in Argentina. Some observations on El Domingo (1938) and Mañana (1947)"] en *Revista Delito y Sociedad*, volumen 1, n°43, Primer semestre 2017, pp.53-90. Disponible en: http://bibliotecavirtual.unl.edu.ar/ojs/index.php/DelitoYSociedad/issue/view/658/showToc.
4) 2017: Núñez, Jorge y Olaeta, Hernán: Sobre continuidades y rupturas en la estadística penitenciaria argentina. Un ejercicio comparativo de los Censos Carcelarios Nacionales de 1906 y 2006 [On continuities and ruptures in the Argentine penitentiary statistics. A comparative exercise of the National Prison Censuses of 1906 and 2006], en *Documentos de Trabajo*, n°1. Centro de Estudios Latinoamericanos sobre Inseguridad y Violencia, Universidad Nacional de Tres de Febrero, ISSN 2591-6246, p. 1-40. Disponible en http://celiv.untref.edu.ar/serie-documentos-trabajo.html.
5) Núñez, Jorge y Cesano, José Daniel. 2016. Formando la urdimbre o los delgados hilos del tejido carcelario [Forming the warp or the thin threads of the prison fabric, en *Revista de Historia de las Prisiones*, n°3, 2016, pp.6-9. ISSN: 2451-6473.]
6) 2016. La reforma penitenciaria peronista vista desde España: análisis de la gestión de Roberto Pettinato en la Revista de la Escuela de Estudios Penitenciarios (Madrid, 1947-1958) [Peronist penitentiary reform seen from Spain: analysis of the management of Roberto Pettinato in the Journal of the School of Penitentiary Studies (Madrid, 1947-1958)], en *Anuario de Derecho Penal y Ciencias Penales*, Ministerio de Justicia, España, ISSN: 0210-3001, Tomo LXIX, n° MMXV, pp.449-480. https://www.boe.es/publicaciones/anuarios_derecho/articulo.php?id=ANU-P-2016-10044900480.
7) Núñez, Jorge y Cesano, José Daniel. 2016. Dos textos escondidos de José Ingenieros [Two Hidden Texts by José Ingenieros], en

Revista de Derecho Penal y Criminología, año VI, n°7, Agosto 2016, pp.197-210.

8) Núñez, Jorge y González Alvo, Luis (coordinadores). 2016. Dossier: Políticas del castigo en la Argentina. Estado y regímenes penitenciarios. [Dossier: Policies of punish-ment in Argentina]en *Programa Interuniversitario de Historia Política*. Febrero 2016, n°76. Disponible en http://historia politica.com/dossiers/dossier-politicas-del-castigo-en-la-argentina-estado-y-regimenes-penitenciarios/.

Book:

1) Cesano, José Daniel y Núñez, Jorge. 2016. *Ingenieros, José. Los alienados delincuentes ante la ley penal. Sistema penitenciario. Estudio preliminar* [*Engineers, José. The alienated criminals before the criminal law. Prison system. Preliminary study.*]. Colección Criminología Argentina, N°6, Buena Vista Editores, Córdoba, 2016. ISBN: 9789871467709.

Chapter:

1) 2018. "From Free Will to Social Defense (or from Cesare Beccaria to Cesare Lombroso). Julio Herrera and the Criminal Law Codification in Argentina (1903-1922)," en Aniceto Masferrer (coordinador), *The Western Codification of Criminal Law. Colección Studies in History of Law. Justice*, Vol. 11, capítulo 12, ISBN: 978-3-319-71911-5-432428-1.

José Daniel Cesano

Affiliation: Academia Nacional de Derecho y Ciencias Sociales de Córdoba - Instituto de Investigaciones de Historia del Derecho.

Education: Doctor en Derecho y Ciencias Sociales, Universidad Nacional de Córdoba (Argentina).

Professional Appointments: Miembro de Número de la Academia Nacional de Derecho y Ciencias Sociales de Córdoba (Argentina). Miembro correspondiente de la Academia Nacional de Ciencias de Buenos Aires. Miembro Titular del Instituto de Investigaciones de Historia del Derecho (Buenos Aires). Miembro Titular del Instituto de Historia del Derecho y de las Ideas Políticas de la Academia Nacional de Derecho y Ciencias Sociales de Córdoba (Argentina). Vice-director del Instituto de Ciencias Penales de la Academia Nacional de Derecho y Ciencias Sociales de Córdoba (Argentina). Director del Instituto de Derecho Comparado de la Academia Nacional de Derecho y Ciencias Sociales de Córdoba (Argentina). Profesor de posgrado (en Carreras de Especialización, Maestría y Doctorado) en Derecho Penal, Penal Procesal, Política Criminal, Criminología e historia del Control Sociales en las Universidades de Buenos Aires, Córdoba, Cuyo, La Rioja, Mar del Plata, Litoral, Nordeste, Siglo 21, Blas Pascal y Austral. Líneas de Investigación: Criminología, Derecho Penitenciario, Historia del Control Social, Antropología y Derecho. Codirector de la Revista de Historia de las Prisiones.

Publications from the Last 3 Years:

1) 2018. "Entre leyes y saberes: normas procesales, ejecución penitenciaria y formación de los abogados en Córdoba (1887/1940)," ["Between laws and knowledge: procedural rules, execution penitentiary and training of lawyers in Córdoba (1887/1940)"] en *Revista Brasileira de Direito Processual Penal*, ISSN-e 2525-510X, Vol. 4, N°. 3, 2018, págs. 1321-1344.
2) 2017. "El valor de la pericia antropológica en el proceso penal en los casos de delitos culturalmente motivados" [The value of anthropological expertise in criminal proceedings in cases of culturally motivated crimes], en *Revista de derecho Penal y Criminología*, ISSN 0034-7914, N°. 1, 2017, págs. 83-96.
3) José Luis Cesano y Jorge Alberto Núñez. 2016. "Dos textos escondidos de José Ingenieros" ["Two Hidden Texts by José

Ingenieros"], en *Revista de derecho Penal y Criminología*, ISSN 0034-7914, N°. 7, 2016, págs. 197-210.

4) 2014. "El análisis historiográfico de la prisión en la Argentina hacia giro de siglo (1890-1920): la necesidad de una historia local y comparada. Aportes metodológicos para una historia en construcción" ["The historiographic analysis of the prison in Argentina around the turn of the century (1890-1920): the need for a local and comparative history. Methodological contributions for a history under construction"], en *Revista de derecho Penal y Criminología*, ISSN 0034-7914, N°. 7, 2014, págs. 217-224.

Books:

1) 2015. *Los encuentros de la Antropología con el saber jurídico penal.* [*The encounters of Anthropology with criminal legal knowledge*]. Buenos Aires: Ed. B de F, Montevideo.
2) 2015. *Diálogos y préstamos: La historia del sistema penal como un espacio compartido* [*Dialogues and loans: The history of the penal system as a shared space*]. Resistencia: Ed. ConTexto.
3) 2016. *Medicalizando la niñez delincuente. Intervenciones psiquiátricas en la criminalidad infantil (Buenos Aires, Rosario, Córdoba – 1920/1940).* [*Medicalizing delinquent childhood. Psychiatric interventions in child criminality (Buenos Aires, Rosario, Córdoba - 1920/1940)*] Cordoba: Ed. Brujas.