H-Net Reviews
in the Humanities & Social Sciences

Ricardo D. Salvatore, Carlos Aguirre, Gilbert M. Joseph, eds. *Crime and Punishment in Latin America: Law and Society Since Late Colonial Latin America.* Durham: Duke University Press, 2001. xxi + 448 pp. $24.95 (paper), ISBN 978-0-8223-2744-8; $89.95 (cloth), ISBN 978-0-8223-2734-9.

Reviewed by Peter M. Beattie (Department of History, Michigan State University)

Published on H-LatAm (October, 2003)

Legal history has a venerable tradition in scholarship on Latin America that for much of the twentieth century formed a core of long-standing debates about the nature of Iberian empires and their post-colonial heirs. The classic debates over the Black Legend and comparative race relations in the Americas once proudly hinged on references to Iberian law (sometimes narrowly conceived as the legal codes themselves) and legal practices. More recently, the field of legal history has come to be seen as a rather humdrum, "traditional" field of research. Even though self-proclaimed "new" social and cultural historians have relied on legal documents to locate the voices of the poor and mostly illiterate, few have dared to characterize their work as "legal history." I admit that I, too, am guilty of a similar sin because I sought to distance my own research on common Brazilian soldiers from plain old, maligned military history. Part of me feared being stereotyped as a closeted participant in the historical reenactment of Civil War battles or something far worse. I imagine that legal historians have similar misgivings about being seen as exciting and innovative as a lunch meeting with Bartleby the Scrivener.

Whatever our fears may be, it now seems that what is old is now new, even if the term "new" certainly no longer is. Like taboo forests whose fauna and flora remained largely untouched for a time because of scholarly proscriptions against entering them, historians are now "reclaiming" (or to extend the metaphor and the feeling one gets from some scholars' reluctance, "poaching") political, legal, military, diplomatic, economic, and other "traditional" subfields as near virgin stands ripe for the application of the tools developed by the new social and cultural history combined with other approaches.[1] But to squat on these badlands without becoming a polluted pariah, the cutting-edge historian must break the spell of custom by repeating the ritual incantation "new, new, and new," not unlike the outlandish forest knights who say, "Ni," in Monty Python's *The Holy Grail* in their quest for shrubbery (and even they changed their sacred word between scenes 13 and 19). Perhaps it is time for us historians to make peace with our forebears by saying we proudly work on sacred, secular, public, private, popular, elite, traditional, and untouchable-cow fields in innovative ways, as any scholar working on any subject should. In a better world, we would let our methods, approach, and interpretations rather than our labels or topics demonstrate what is novel, but if that dream is drawn from a pipe, then I think we should at least expect better, more original labels from ourselves. This is a long-winded and somewhat impish introduction to a review of an important volume that the editors describe as "the new legal history," and while I take exception with this generic, twentieth-century advertisement, I found

that beneath it lay a delectable collection of fresh, home-grown, hand-picked essays, chock full of vitamins, fiber, flavor, and comparative insights. The worn out "new" label seems more appropriate for canned fruit and vegetables whose expiration date looms in an abandoned Cold War fallout shelter somewhere near Crawford, Texas. In short, to put "new" in front of an established subfield is by now as conservative and predictable as tweed at an AHA meeting. Thus, in my view, "new" does the legal history field small justice and obscures the original work of the editors and contributors to this volume.

As Gil Joseph points out in his preface to the volume, the widespread political oppression of Latin American citizens by agents of the law in the 1960s, 1970s, and 1980s encouraged a rather cynical attitude toward legal institutions and principles as little more than tools for political and/or class repression. This in no small way lent itself to the decline of legal history's proud place in Latin American scholarship. The problems with crime in recent decades, especially after the decline of repressive dictatorships whose very dungeons incubated some organized crime groups, has brought a new urgency to the study of legal institutions, practices, and attitudes toward them. The attempts to fight the corruption and violence associated with the drug trade and pirated goods, and the difficulties authorities have recently faced controlling incarcerated convicts in overcrowded penitentiaries, are just to mention a few phenomena that bring the significance of the law in Latin America to international attention. These many problems have grown in step with deepening democratization, neo-liberal economic policies, and globalization in the region. The authors of this volume have made a significant contribution to a subject vital to the efforts to understand and to reconsider legal institutions to foster more democratic and socially just societies in post-Cold War Latin America.

Ricardo D. Salvatore and Carlos Aguirre begin the volume with a brisk synthesis of Latin American legal history and a brief agenda for future research. This is a model essay that any graduate student preparing for comprehensive exams should appreciate for its broad yet concise critical assessment of a significant field. Along the way, the authors sensibly point out that the history of how the formal legal system worked in most of Latin America is still fragmentary. This makes the types of analysis now in fashion among North Atlantic historians–which explore popular notions of justice and how they clashed and dovetailed with formal liberal-inspired jurisprudence–difficult to pursue. Still, they note that there are relevant questions related to these issues that remain within the reach of future researchers in Latin America that should be kept in mind. For example, did political independence give greater popular access to the court system, especially for indigenous groups, slaves, free people of color, children, and women as litigants and witnesses? If so, how did they cope with these new practices and ideologies? How did medico-legal concepts of crime and criminality color popular perceptions of criminal responsibility and the enforcement of liberal laws posited on the concept of individual responsibility? To what extent did prison regimes depart from dominant legal ideas about the reform of prisoners, and how did inmates respond to these conditions? How did civil courts navigate the decline of corporative legal institutions (ecclesiastical and indigenous courts and military fueros, foros in Brazil)? How did popular actors respond to new representations of criminality? Not all these questions are completely new and they are more heavily weighted toward the nineteenth than the twentieth century, but these guiding questions are partially answered by the volume's contributors who provide a variety of fresh approaches that promise to yield a more nuanced analysis of law and society in Latin America.

The volume is divided into three major parts: "Legal Mediations," "The Social and Cultural Construction of Crime," and "Contested Meanings of Punishment." The first section treats many of the intersections between formal institutions and popular understandings and practices of justice. Anyone familiar with William Faulkner's *The Hamlet* will find a familiar subject in Juan Manuel Palacio's "Judges, Lawyers, and Farmers: The Uses of Justice and the Circulation of Law in Rural Buenos Aires, 1900-1940"–the use of vouchers and promissory notes as a parallel currency that bound together farmers, farm laborers, share croppers, merchants, and courts. Palacio uses court records related to the legal battles over payments, credits, and debts to study the spread of legal concepts and practices to rural farmers and farm laborers during the "peace of wheat" or the relatively nonviolent social relations that characterized early-twentieth-century Buenos Aires Province. In short, he concludes that the court system helped to establish the legitimacy of the state by effectively regulating contracts and property among rural actors.

Palacio finds that many common rural denizens of Buenos Aires had acquired a rather sophisticated knowledge of their rights and the legal system. Furthermore, he concludes that this knowledge helps to explain the end of the "peace of wheat" during the Peron years when tenants and farm laborers aggressively used new laws and

extra-legal means to protect their interests. This chapter goes the farthest of all the contributions in this volume in exploring the question Douglas Hay sets forth in a postscript chapter, and the editors take up in the introduction, "how much did popular agents know about the parts of a legal (criminal or civil) process?" (p. 21). But one leaves the article wondering if there were absolutely no barn-burning "Snopeses" in the rural "hamlets" of Buenos Aires Province before Peron came to power, or whether, as Hay wonders (p. 420), the Snopeses did not show up in the courtroom either because they did not trust them or because they were unfamiliar with them. It is also possible, as with Flem Snopes, that those in a position to sue them did not do so out of fear of retribution, or that these scoundrels were summarily dealt with by creditors, land owners, merchants, and their henchmen out of court.

Luiz A. Gonz=lez's "Work, Property, and Negotiation of Rights in the Brazilian Cane Field: Campos, Rio de Janeiro, 1930-1950" finds that unlike the Peronist regime in Palacio's case study, President Get=lio Vargas's administration found ways of "institutionalizing class struggle" between cane workers and producers and mill owners through the mediation of disputes by the Instituto do A==car e do Alcool (IAA). By seeking, successfully in many cases, to defend their interests through the IAA, Gonz=lez argues that cane growers lent legitimacy to the Vargas regime and that this provides insight into how his dictatorship won praise and support from small farmers and agricultural laborers. As proof, he notes that Campos became a center of stalwart support for Vargas's left-of-center Partido Social Democr=tico in subsequent decades.

The juxtaposition between periods of relative rural peace and agitation in Gonz=lez and Palacio's case studies contrast in an interesting fashion with Charles F. Walker's "Crime in the Time of the Great Fear: Indians and the State in the Peruvian Southern Andes, 1780-1820." Walker treats a region and a period punctuated by two major rural insurrections, but he concludes that the avid use of the court system by indigenous actors in no way impeded their use of "more direct action" or insurrection (p. 50). Taken together these three essays suggest the complexity of interpreting the relationship between an independent court system and "peaceful" social and "orderly" political relationships, especially in rural areas. In short, how significant is an independent and publicly respected judiciary to political stability? How do we get a better handle on this complex issue?

Arlene J. D=az's "Women, Order, and Progress in Guzm=n Blanco's Venezuela, 1870-1888" shifts gears in this section by focusing on women and gender as categories of analysis to measure continuities and shifts in legal and social relationships. She notes, on the one hand, that post-independence Venezuelan law continued to view the patriarchal nuclear family as the cornerstone of good public order and morality. Thus, the rights of women to participate as individuals in Venezuela's legal system remained limited. On the other hand, she is quick to note how women often found ways to use the legal constraints intended to subordinate them to challenge the power of their patriarchal protectors and defy dominant stereotypes of women. By looking at law, rape cases, marriage annulments, and state enforced shotgun marriages, D=az explores how women exploited their limited capabilities for maneuver. She also finds, as authors have elsewhere in Latin America, that many women did not desire marriage because they felt it limited their autonomy which outweighed the honor this status supposedly bestowed upon them. These examples of defiance, she concludes, make the state's ability to discipline women seem "questionable" (p. 73). Once again, D=az, and the other authors in this section, draw us back to a basic tension in the interpretations of law and the judiciary as effective in establishing discipline, peaceful social relations, and state hegemony. Should older liberal interpretations of violence being the result of the breakdown of public institutions and norms that should prevent it be reconsidered and reworked? Or do more recent interpretations that portray violence as structured into social interactions deserve higher priority in future research? This set of essays presents us with some interesting questions to ponder.

I found the volume's middle section, "The Social and Cultural Construction of Crime," the most intriguing one as authors brought different approaches to ponder the disputed and mutable ideas of criminality that were forged in specific, mostly urban contexts across Latin America. These chapters cover the widest variety of topics of any section in the volume moving from prostitution to witchcraft, the "passion" defense, and the identification of a professional criminal class. They also boast the widest variety of approaches to these diverse subjects.

One of my favorite chapters in the volume is Kristin Ruggeiro's "Passion, Perversity, and the Pace of Justice in Argentina at the Turn of the Century." The idea that passion was a force that could override an individual's free will to the point that it could exculpate criminal acts was not uncommon in turn-of-the-century Argentine ju-

risprudence, but it was not always a successful courtroom strategy. Ruggiero looks at how the passion defense was deployed in a variety of selected cases such as adultery, attempted homicide, homicide, and abduction. She outlines some of the factors that favored or undermined the passion defense including medico-legal theory, interpretations of biological traits, ethnicity, education, and the circumstances of the crime. Passion bundled positive and negative attributes that were open to dispute in courtroom arguments as well as essays on the nature of Argentine national character. For many legal scholars a lack of passion could render citizens just as dangerous as those who could not control their emotional responses. Harnessing positive passionate energy to an orderly and moralizing love of nation was seen by many intellectuals as essential to national destiny, but what should be done about victims of bouts of passion that allegedly caused some to commit heinous crimes was less clear. Temperance, a lack of remorse, rational behavior, a superior level of education, and certain biological traits associated with Lombrosian theories of the born criminal were all among the elements that could weaken the viability of the passion defense in court.

Ruggeiro's work provides an original approach that will help to build a stronger comparative historical context of the medico-legal concept of passion. For instance, a question that seems clear from my own work on much less commonly studied courts martial is that the passion defense was much more acceptable in civil courts than in military ones, at least when enlisted men were on trial. In Brazil, courts martial rarely exculpated enlisted defendants who killed or injured comrades, wives, or lovers when they argued that they had been victims of "alucina==o" or an impassioned temporary insanity, and since the late eighteenth century, military laws governing Brazil's army in the nineteenth century had made drunkenness an aggravating factor in crimes or disciplinary infractions rather than an element that could possibly attenuate culpability. I would imagine, too, that the passion defense would not hold much water in commercial or ecclesiastical courts. It would seem that different legal traditions and institutions had different takes on how to interpret passion and how much allowance could be made for it.

Dain Borges moves the reader in a different direction by examining why authorities of the Brazilian Republic found it necessary to propagate laws against witchcraft in the early 1890s that legislators had not found necessary in the previous six decades. To do this he examines the new laws and the sporadic attempts to apply them to followers of Allan Kardec's Spiritistism and their Afro-Brazilian religious counterparts. He also considers how these religious traditions and their approaches to healing were depicted in literature and scholarship in the turn-of-the-century Brazil, particularly in Salvador and Rio de Janeiro. As Borges shows, the laws banning witchcraft and other popular healing practices were most tightly bound up with attempts to professionalize medicine and to limit its practice to those with sanctioned degrees. It also followed more general trends to sanitize, civilize, and whiten Brazil's population through state-driven projects. In practice, few Kardec- or Afro-Spiritists were ever brought to trial or convicted. Police raids and short stints in prisons were much more common, especially for leaders of Afro-Brazilian cults.

What emerges from Borges's chapter is a fascinating voyage along the disputed frontiers of science, religion, magic, medicine, psychology, homeopathy, and criminality in Brazil's Old Republic. Periods of relative tolerance toward these religions, that offered unconventional treatments for a broader range of human ills and desires than scientific medicine, alternated with periods of repression. It is interesting to note that many of the most prominent legal and medical scholars of the day did not believe that the legal repression of these religions was the way to combat their influence which they believed to be pernicious. Those less connected to state-building projects like the novelists Lima Barreto and Xavier Marques used Afro-Brazilian religion to point out the inflated pretensions of official Republican authority and the mystification of ideologies like militarist nationalism. That many Brazilians of all classes continued to frequent these places of religious worship subject to repeated state sanction indicates that they, too, shared at least a partial critique of Republican authority, and had their own understanding of the limits of state power and ideology. By the end of the 1940s, state repression of these religions had subsided and thus, their practice was no longer considered criminal.

The first and last chapters in this section pair nicely and, like Dain Borges, the authors are concerned with the "professionalization" of an occupational class, but in these chapters, the focus is on female prostitutes and mostly male thieves (rateros) in late-nineteenth- and early-twentieth-century Mexico City. Cristina Rivera-Garza explores the criminalization of carriers of syphilis in "The Criminalization of the Syphilitic Body: Prostitutes, Health Crimes, and Society in Mexico City, 1867-1930," and Pablo Picato explores the emergence of a supposed collective community of professional criminals in

"The Making of Criminals in Modern Mexico." Whereas public health authorities and sexologists used fears of syphilis as a means of justifying their expertise to identify and to control women who made their livings in sexual commerce, criminological scholars and police authorities manipulated fears of crime and claimed the ability to recognize the collective community of rateros or urban thieves and streetwise grifters, the vast majority of whom were men. Sanitary police forced female prostitutes to undergo physical examinations and if infected with syphilis, they had to accept treatments in state-directed hospitals where they were confined and separated from family and children. Many rateros were exiled from Mexico City to work in the Valle Nacional, Yucat=n, and the Islas Mar=as at forced labor camps and others were pressed into military service. Both authors analyze with sensitivity how experts, police, prostitutes, and rateros interacted to influence the formation of the identity of these categories.

The recognition of registered prostitutes' roles as a potential threat and a safeguard for respectable families made it possible for them to begin to articulate a public transcript of demands for better treatment by authorities in the 1920s. In these complaints, groups of prostitutes often partially adopted stereotypes that portrayed them as degraded, but they also insisted that economic circumstances had forced most of their number to the sex trade as a survival measure. In short, they deserved public pity rather than reprobation. They pointed out that many prostitutes were mothers who hustled to provide for and protect their children, and argued that policies that separated them from their children were cruel and anti-family. Adopting revolutionary rhetoric, they depicted themselves as exploited workers who suffered from the abuse of clients, pimps, and government officials and demanded greater respect and protection. Many authorities and sexologists ultimately found that harsh measures that criminalized the syphilis-infected bodies of female prostitutes did not work well because they tended to drive more and more women into unregulated clandestine or underground prostitution.

In the case of rateros, police repression helped to develop a subset of petty criminals who became masters of exploiting the weak points of Mexico City's criminal justice system. In short, criminologists and police claims to expertise in identifying and repressing rateros worked to create the vary category of criminals they argued had preexisted their efforts. One result of this process was the emergence of modern criminals who often got much of their training through short stints in jail where they traded information and lessons learned in the risky world of criminal economy. By the 1920s, gangs of professional criminals emerged who specialized in lucrative and more sophisticated heists like safe cracking, armed robbery, and automobile theft, and some had developed networks of protection from corrupt police, politicians, and judicial authorities. These criminals circulated in fashionable parts of the city and defied the older stereotypes of the poor "artisan" ratero and Lombroso's ideas of criminals being easily identified "plague" that could be separated from law-abiding citizens.

The final section of the book treats how different governments sought to punish and/or reform criminals. The contributors to this section explore the prison experience from a variety of perspectives and the issues of corporal and capital punishment. The section title, "Contested Meanings of Punishment," is somewhat misleading as the authors do much more than consider disputed "meanings" of punishment, but also engage with the means, consequences, and human anguish of it.

Diana Paton's "The Penalties of Freedom: Punishment in Post-emancipation Jamaica" explores how the British island's colonial administrators abandoned the reform project of the penitentiary to institute a limited convict lease system and eventually a return to corporal punishments as the most effective means of disciplining the mostly nonwhite working population. Paton correctly sees race as the key to the different outcomes of punishment in the nineteenth-century British Caribbean when compared to the refinement of the penitentiary system in Britain. While the comparison with Europe serves to bring out contrasts, the lack of more extensive comparisons with penal justice systems in the Americas limits the comparative potential of the only non-Latin American case study in the volume. A brief nod is made to the convict-lease system in the southern United States and to two articles on Latin America, one on Peru and the other on Puerto Rico. A fuller consideration of recent literature on corporal punishment and penology in the Americas might have led her to extend her analysis of how the racial composition of populations and ideologies influenced penal policies in different ways across the Americas, including other parts of the British Caribbean. As Edward Ayres argued, one of the reasons southern states in the U.S. abandoned their antebellum penitentiary projects was that they would be obliged to integrate white and black prisoners after the war.[2] Mostly racially segregated convict-lease and later chain gang road crews not only fit the needs of incipient industries, but also dovetailed with ideas of racial purity that many

white workers and convicts in the U.S. South embraced, not to mention the industrialists who used the cheap prison labor and racial tensions to help to keep unionism at bay.[3] In Jamaica, where the majority of the working population was nonwhite, this concern likely did not have the same force or utility.

In Latin America this type of racial segregation was rarely given the same importance as in the U.S. In nineteenth-century Brazil, for instance, African-born slave convicts did their time alongside American-born slaves, free men of color, and white men, even though these were broadly considered significant markers of distinctive status in Brazil's sistema de castas. Indeed, slave convicts at Fernando de Noronha's agricultural penal colony were evenly dispersed among penal colony work crews rather than congregated together, despite the half-hearted attempts of one inspector to change that policy to create two all-slave convict work crews to do the most menial and difficult tasks on the island. Another inspector expressed shock that a slave inmate had been promoted to the rank of a convict sergeant who directed a work crew of over one hundred men of all races. Among Brazil's mostly nonwhite population, segregation never gained legal sanction, as penal practices bear out, but less formalized racist practices worked to limit the possibilities for social ascension of most men and women of color. This, of course, meant that a disproportionate number of convicts were nonwhite. As these comments indicate, Paton's fine Jamaican case study provides a platform from which readers can make their own comparisons of punishment and society in the Americas.

Ricardo Salvatore analyzes the ultimate corporal punishment in "Death and Liberalism: Capital Punishment after the Fall of Rosas." Some forty public executions took place from 1852 to 1864 under a shaky liberal order that emerged after Rosas's dictatorship. Only a few of those executed were Rosas's political cronies because the judiciary came to reason that the dictator's henchmen followed orders in the knowledge that failure to do so could endanger their lives. Judges argued that the general terror and savagery prevalent during Rosas's rule attenuated the culpability of those who lived under it. This opinion dovetailed with the emerging elitist stereotype of the common Argentine as a savage whose behavior could not be held in check by laws, reason, and democratic consensus. Thus, Argentina's liberal reformers used public executions as an antidote to what they saw as a crime wave that began after Rosas's years of repressive rule. According to Salvatore, the "liberals" sought to use capital punishment in a parsimonious fashion for only the most objectionable crimes, and they limited the public exposure of the corpse in an attempt to distinguish themselves from the Rosas regime. Still he emphasizes that during this period of political transition, continuities outpaced penal reform.

The state publicly executed mostly men who committed heinous murders with aggravating circumstances. Indeed, when the government threatened to execute a pregnant woman, the public outcry against an act that harkened back to Rosas's notorious execution of the pregnant Camila O'Gorman led the liberal government to outlaw capital punishment altogether. Clearly, more traditional concepts of gender and patriarchy alongside issues of individual responsibility in the case of an unborn child reveal much about broadly shared ideas of appropriate punishment and the limits of state power. While some might argue that the relatively small number of these public executions limit their significance, Salvatore uses them effectively to illuminate broader issues of class and gender along with the contradictions within the emerging liberal legal order. As Salvatore's case study demonstrates and Douglas Hay's summary chapter emphasizes, we should not be too quick to associate the economic liberalism of markets with the political rights and reforms apologists so often do, particularly in a neoliberal world where talk of a "democratic jihad" is afoot.

Carlos Aguirre's chapter turns the reader's attention to the penitentiary project of the Peruvian state. He focuses his attention on how convicts responded to their prison experience by analyzing petitions written by prisoners in "Disputed Views of Incarceration in Lima, 1890-1930: The Prisoner's Agenda for Prison Reform." The reader never finds out exactly how many letters make up the universe under analysis, but "numerous" missives to authorities asking for pardons or improved conditions revealed a change in the quality and tone of inmate appeals. Over the course of four decades, Aguirre detects a slow evolution from deferential requests for individual favor to collective letters that take a more combative stance demanding that the rights of prisoners be respected by authorities. The author is careful to note, however, that some prisoners continued to pursue personal approaches and eschewed linking themselves to collective politicking. Peruvian prisoners began to appropriate and selectively deploy the rhetoric of prison reformers in the twentieth century who hoped to modernize Peruvian society and discipline its refractory elements humanely. These collective strategies also reflected broader changes in society where unions and other social and political movements influenced prison culture. Aguirre's study

demonstrates the connectedness of those placed behind penitentiary walls to larger trends and events in society that belies a myth that shrouds inmates in a haze of social and political isolation.

Donna Guy brings together a fascinating amalgam of birth status, age-cohort, class, and gender as categories of analysis to examine the Argentine state's maladroit attempts to help thousands of abandoned and delinquent girls from ages five to twenty in "Girls in Prison: Buenos Aires Casa Correccional de Mujeres as an Institution for Child Rescue, 1890-1940." Since there was a limited capacity in Buenos Aires orphanages, many of these unfortunate girls ironically ended up being housed with adult female criminals in jail. At first, authorities succeeded in returning about one third of these young women to biological family members, but through the half-century understudy, they had greater difficulty returning girls to kin. They placed more and more girls with foster families (in some years more than half) where most worked as domestic servants, and the rest were simply held in prison. While on paper the foster home seemed far superior to prison, physicians reported that girls were not always well cared for and, in many cases, males in foster families sexually abused them. The desire to protect often had the unintended consequences authorities sought to prevent.

Child rescue became a more prominent political issue during Peron's mandates when the illegitimate Evita created state institutions to help them and her wealthy enemies retaliated by reinvigorated Conservative Catholic charitable organizations to do the same. One of the results of this clash of classes for the hearts and minds of disadvantaged and wayward girls was the "official elimination of public stigmas related to class, parental status, and degree of legitimacy." (p. 387) The employment of these "rescued" girls also reveals significant shifts in the gendering of the job market as in the 1930s the government deemed it appropriate to contract girls for factory work in textile mills whereas before the state had focused on removing these girls from the public sphere and placing them in gender-appropriate domestic settings. Guy's chapter sheds new light on these profound shifts in public attitudes and practices which have important implications for a variety of interlinked subfields such as the history of childhood, labor, class, femininity, birth status, and crime.

Lila M. Caimari examines how prisoners responded to criminological investigations into their pasts in "Remembering Freedom: Life as Seen from the Prison Cell, Buenos Aires Province, 1930-1950." She analyzes interviews conducted with inmates and the reports authorities based on this information. As part of this exercise, convicts were invited to write their own biographies. These life histories reveal how prisoners shaped their "memories of freedom" under stilted circumstances. The criminologists used this information to assess, among other things, the ability of convicts to readapt to life outside prison walls, and for their part, convicts mostly tried to present themselves in a light that they believed would illicit a favorable evaluation. Some inmates made missteps in their efforts to manipulate the system through their responses and biographical narratives, but some demonstrated a more nuanced ability to influence the favorable opinions of authorities. Like Aguirre's, Caimari's analysis demonstrates that the influence of criminological theory and the legal system were uneven and variegated. Caimari's observations on the gendered treatment of inmates confirm many of the observations found in Guy's chapter. While men from mostly rural origins were taught trades appropriate to the urban labor market, the emphasis on work rehabilitation for women was light. Women inmates worked cleaning and washing which reinforced the idea that they should be destined for domestic labor.

In their own biographies, inmates wrote about their childhoods, family lives, work experiences, struggles with poverty, religious practices, and educational experiences as well as their relationships with alcohol. Inmates tended to downplay proclivities and behavior that they believed would confirm the worst fears of authorities. On the one hand, inmates seemed to know that underplaying their alcohol use would please authorities influenced by eugenic and positivist ideas of alcoholism and anti-social behavior. On the other, they tended to romanticize their relationship with their teachers which, in most cases, tended to be brief. The difficulties that poor convicts confronted in terms of hunger and disease was played up, and not surprisingly, women's sexuality was judged much more harshly than male liaisons, even if the women had been coerced. In short, inmates had a general sense of what their investigators wanted to hear, but they sometimes misconstrued them. In counterpart, Caimari notes that investigators tended to make non-scientific assessments of criminals in their notes that reflected class prejudice rather than positivist jurisprudence. Caimari's chapter is one of the most theoretically engaged as she makes effective use of insights from Michel de Certeau and Pierre Bourdieu, but one felt the need for some old-fashioned social history concern with divulging the num-

ber of cases available and under analysis. As Hay notes, positivist counts cannot resolve many important issues (p. 420) but they do help to provide needed context. Caimari, like Palacio and Aguirre, explores in innovative ways how the least favored received and attempted to manipulate legal and reformist rhetoric.

Finally Douglas Hay's "Law and Society in Comparative Perspective" brings an "outsider" assessment of the recent work on Latin American legal history represented in the volume along with a sprinkling of observations from other regional case studies with which he is familiar. A specialist in the legal history of England and British Canada, Hay makes some intriguing observations that will hopefully open the door to more broad comparisons and debate as work on Latin American legal history develops. Two of his major observations were briefly treated above. First, Hay stresses the need to consider the encounter between "folk" conceptions of justice and far from monolithic liberal legal reforms in Latin America. Second, he notes the need to keep inequality at the center of our analysis of law enforcement as much of it is crafted to create and maintain disparity (p. 421). As he points out, nineteenth-century Britain was probably the most liberal economy in the world but it was highly inequitable and, in many ways, remained an exclusionary system for much of that century. Finally, an interesting sweeping hypothesis he forwards is that the metaphor of the market and faith in entrepreneurial individualism were so strong in the Anglophone world that it stymied the influence of Lombrosian criminology. He suggests that in Latin America where the power of these ideas was more subdued and corporatist ideals remained strong, it left the door open to physicians and criminologists to assert greater influence on ideas of criminal behavior, culpability, and honor.

I hope my initial impishness and sprinkling of critical comments will not distract the reader of this review from my overall admiration for the work of the contributors and editors of this volume. *Crime and Punishment in Latin America* is among the finest recent collections of essays on law and society, and I am confident it will be read by a wide audience. The chapters engage in innovated ways with a broad spectrum of appropriate theory and work to place their case studies in dialogue with case studies in other regions. The volume is well calibrated to fit upper division undergraduate and graduate Latin American historiography seminars that seek to cover a broad swath of recent developments in different subfields. It will also be useful for regional and comparative courses that focus on themes such as crime and criminality, state building, citizenship, and social control. I would conclude this favorable review by adding some more emphasis to a number of areas that the editors and contributors touch on as agendas for future work in this subfield.

Of any field, the study of criminality is one that cries out for a fuller engagement with a burgeoning literature on masculinity and manhood as categories of analysis. We historians of Latin America are too far behind the eight ball when it comes to an analysis of masculinities when compared to historians of other regions and to our regional colleagues in anthropology and literary criticism. In a greater metaphoric sense, Latin America itself is largely stereotyped in terms of the abuse of male prerogatives as indicated by the term "macho" which has become an international catch phrase for this sometimes favorable but mostly critical cultural perception. I would argue that predominant images of criminality were "malecentric" (although, of course, as Rivera-Garza and Guy show, women were the focus of attention in certain criminal categories, such as prostitution). Still, the vast majority of those arrested, prosecuted, and jailed were male, not to mention the gender of most state agents responsible for enforcing laws. The contributions to the volume that focus on gender give most of their attentiont to women although it should be noted that some of the contributors have privileged masculinity as a category of historical analysis elsewhere. I would like to see disputed ideas of manhood and masculinities addressed as a more integral category of analysis in future research in the legal history field.

Age categories are another underemphasized and under-theorized category of analysis in current historical research on law and order that has to be addressed in greater theoretical depth. It is an area which promises to bring new insights to broader debates. The category of youth and youth culture is fundamental to the development of fundamental ideas of criminality and efforts to combat it. The historical development of gangs and other typically youthful "criminal" survival strategies in urban centers and rural areas deserves more attention from researchers. A related question might be how did emerging ideas of childhood inflect ideas of criminality and reform? Guy's chapter on child rescue goes the furthest in this volume to suggest the potential of age cohort for future historical research in this field.

Future research on punishment might address issues of penal institutions in terms of labor and economic history. In the twenty-first century, prison populations are

growing and there is no trend on the horizon, beyond hoped for economic growth, which seems likely to reverse this process. It seems likely that the great question of coerced labor in our times will be prison labor, especially as it becomes integrated into corporate infrastructure and competes with organized labor for market share internationally. This process is much more advanced in the United States where unemployment is relatively low and pressure to make prisoners "pay" for their crimes and upkeep is higher, but the return to open civilian regimes has seen many Latin American politicians adopt anti-crime rhetoric similar to that of their U.S. counterparts. Moreover, the histories of ideas of labor and penal reform are also important concepts that were central to the ideas of theorists from Jeremy Bentham to Karl Marx and Michel Foucault. The idea of "productive citizens" is presented as the opposite of the "unproductive criminal class," even though we know these dichotomies are often false. How do "criminal" industries work in tandem or in conflict with legal ones? How do prisons fit broader state-directed economic strategies? How do internal prison economies function despite efforts to tightly regulate these markets? How do prisoners respond to programs intended to reform them? Aguirre's, Guy's, and Caimari's chapters show how fruitful research on prisons can be for numerous fields of inquiry. Once again, some of the contributors, namely Salvatore and Guy, have addressed this topic in other venues.

Yet another area of penal justice that must be addressed more forthrightly in future research is the intersection between military and civilian justice in both democratic periods and what Brian Loveman terms "regimes of exception" (military dictatorships). If some theoreticians relegated civil law to the realm of a tool of class oppression in the past, then military law and legal institutions have seen even less serious critical attention. There has been much more scholarly interest in how civil and ecclesiastical laws and institutions have shaped and been shaped by significant historical transitions. Now, more than ever, as the United States government seeks to use military law to prosecute the "war on terrorism," scholars should become aware of the important links between this corporate system of justice and the development and maintenance of civilian institutions of justice, as Hay observes from a different angle (p. 418). Some interesting lines of future work are suggested in the chapters by Salvatore and Picato when they refer to the importance of military impressments as a means of punishing "criminals" and those thought of as potential criminals in the nineteenth and early twentieth centuries. This issue obviously reflects my own research agenda, but the question of how reforms such as military conscription affected the web of institutions in Latin American criminal justice systems awaits further research.

The value of *Crime and Punishment in Latin America* is demonstrated in the many vistas it opens, only a few of which I have been able to highlight here. I think it will be a significant point of departure in research in the field of legal history for some time to come.

Notes

[1]. Here I borrow from the title of Gil Joseph's edited volume, *Reclaiming the Political in Latin American History: Essays from the North* (Durham: Duke University Press, 2001); Peter Burke notes that those of the French Annales school began to reclaim politics in the 1980s, *A Escola dos Annales 1929-1989: A revolu==o francesa da historiografia*, 3rd ed. (S=o Paulo: UNESP, 1990), p. 100.

[2]. Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth-Century South* (New York: Oxford University Press, 1984).

[3]. A good recent study of these factors is Mary Ellen Curtin, *Black Prisoners and Their World, Alabama, 1865-1900* (Charlottesville: University of Virginia Press, 2000).

If there is additional discussion of this review, you may access it through the network, at:

https://networks.h-net.org/h-latam

Citation: Peter M. Beattie. Review of Salvatore, Ricardo D.; Aguirre, Carlos; Joseph, Gilbert M., eds., *Crime and Punishment in Latin America: Law and Society Since Late Colonial Latin America.* H-LatAm, H-Net Reviews. October, 2003.

URL: http://www.h-net.org/reviews/showrev.php?id=8298

Copyright © 2003 by H-Net, all rights reserved. H-Net permits the redistribution and reprinting of this work for

nonprofit, educational purposes, with full and accurate attribution to the author, web location, date of publication, originating list, and H-Net: Humanities & Social Sciences Online. For any other proposed use, contact the Reviews editorial staff at hbooks@mail.h-net.org.