

# Development and destruction of the liberal prison system in Spain: a general framework for studying the topic

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## **Abstract**

*During the Restoration and the Second Republic, up until the outbreak of the Civil War, the prison system that was developed in Spain had a markedly liberal character. This system had begun to acquire robustness and institutional credibility from the first decade of the 20<sup>th</sup> Century onwards, reaching a peak in the early years of the government of the Second Republic. This process resulted in the establishment of a penitentiary system based on the widespread and predominant values of liberalism. That liberal belief system espoused the defence of social harmony, property and the individual, and penal practices were constructed on the basis of those principles.*

*Subsequently, the Civil War and the accompanying militarist culture altered the prison system, transforming it into an instrument at the service of the conflict, thereby wiping out the liberal agenda that had been nurtured since the mid-19<sup>th</sup> Century.*

## **Keywords**

*Spain, Contemporary History; Restoration; Second Spanish Republic; Spanish Civil War; penitentiary system; punishment*

## Desenvolvimento e destruição do sistema prisional liberal na Espanha: um quadro geral para estudar o tema

## **Resumo**

Durante a Restauração e a Segunda República, até o início da Guerra Civil, o sistema prisional desenvolvido na Espanha teve um carácter marcadamente liberal. Este sistema começou a adquirir robustez e credibilidade institucional a partir da primeira década do século XX, alcançando um pico nos primeiros anos do governo da Segunda República. Este processo resultou no estabelecimento de um sistema penitenciário baseado nos valores generalizados e predominantes do liberalismo. Esse sistema de crença liberal adotou a defesa da harmonia social, da propriedade e do indivíduo, e as práticas penais foram construídas com base nesses princípios. Posteriormente, a Guerra Civil e a cultura militarista acompanhada alteraram o sistema prisional, transformando-o em instrumento ao serviço do conflito, eliminando assim a agenda liberal que foi nutrida desde meados do século XIX.

## **Palavras chave**

Espanha; História Contemporânea; Restauração; Segunda República Espanhola; Guerra Civil Espanhola; sistema penitenciário; punição

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## Introduction

Between 1875 and 1936, the liberal penal system in Spain was consolidated and strengthened. In the first third of the 20<sup>th</sup> Century, it reached the peak of its development – particularly during the Republican period – giving rise to a whole series of reforms and advances during Victoria Kent Siano's brief but intense period in office as Governor of Prisons, between 19 April 1931 and 8 June 1932. Nevertheless, the liberal prison system was destroyed in the chaos of the Civil War, which broke out in the summer of 1936<sup>1</sup>. During the conflict, as will be explained later, prison simply became a further weapon in the armed struggle, gaining particular importance for controlling the rear-guards of both factions. The study of this phenomenon is especially interesting because, as noted by Garland (1999, p. 17), 'the modern penal structures created a feeling of their own inevitability, and of the justice of the *status quo*'. In any case, the penal structures in Spain changed during the War, and were profoundly modified to fit the new political regime that emerged victorious.<sup>2</sup>

## The development and destruction of the penal system

At first glance, one might imagine that, given the numerous political and social upheavals that took place during the Bourbon Restoration (1874-1931), the prison system ought to have undergone similar ups and downs. However, as can be seen from the evolution of the legislation which this article will examine shortly, the turn of the century was a time of consolidation and development of the liberal penal system, following the lines sketched over the course of the 19<sup>th</sup> Century. Prison was a useful tool which the various governments, regardless of their political leanings, employed to regulate behaviour (FRAILE, 1987, p. 94). As the aim of privation of freedom had not changed, it was not necessary to transform the prison system into something dif-

ferent. However, that transformation was to take place later during the Civil War, and the liberal prison system was destroyed as a result.

## The possibility of colonisation by convicts and the Model prison in Madrid

As stated above, even in the 19<sup>th</sup> Century it is possible to see the roots of the penitentiary system that would reach its peak in the early 20<sup>th</sup> Century. Without going into great detail, there are two exemplary initiatives which help to understand the way in which Spain's 19<sup>th</sup> Century prison system developed. Those two examples are the open contest run by the Royal Academy of Political and Moral Sciences (*Real Academia de Ciencias Morales y Políticas*) concerning penal colonisation and the building of the Model prison in Madrid.

In 1875, the Royal Academy of Political and Moral Sciences issued an open call for submissions, asking the question: 'Would it be feasible to establish penal colonies – like the British ones in Botany Bay – on the islands in the Gulf of Guinea or the Marianas?' Three proposals were accepted for consideration: two arguing against the idea of penal colonies – submitted by Concepción Arenal (ARENAL, 1877) and Pedro Armengol i Cornet (ARMENGOL, 1878); and one in favour – submitted by Francisco Lastres (LASTRES, 1887, pp. 109-163); other personalities also expressed a view on the matter – including the prison architect Tomás Aranguren, who was in favour of the plan.

The proponents of penal colonies, following the utilitarian tradition which has been studied by authors such as Rusche and Kirchheimer, argued that the camps would put the large section of the prison population who were idle to work, whilst also lightening the state's economic burden. By colonising new territories, that population would become useful to Spanish society once again and, furthermore, by removing those crimi-

<sup>1</sup>Although it is beyond the scope of this paper, it is interesting to refer to the historiographical debate on the liberal prison system in Spain. For this, as a starting point, it is worth mentioning the works of OLIVER and GARGALLO (2016) and NUÑEZ (2015), as well as the classic works by GARCÍA (1997 and 2006), BERGALLI (1996) and RIVERA (1996, 2006a and 2006b).

<sup>2</sup>This paper is based on written press sources, both official, where the legislation and the normative changes were published (*La Gaceta de Madrid*, *Gaceta de la República*), and independent, from which the image that society received from their prisons can be obtained (*La Vanguardia*, *El Siglo Futuro*, etc.).

nals with the harshest sentences (deportation) from mainland Spain, the scheme would contribute to the defence and peace of society (ROLDÁN, 1988, pp. 158 ff.; CADALSO, 1895).

Yet in spite of the voices in favour of the idea, penal colonisation was never carried out in Spain for three main reasons. Firstly, the legislation precluded the establishment of overseas penal colonies, because it required the colonies to obey the same penitentiary system as existed in mainland Spain (ARMENGOL, 1878). Secondly, as the legislation did not allow prisoner labour to be used for agricultural tasks, the deportation system lost its colonising aspect (ARMENGOL, 1878). Finally, in addition to these economic and legal arguments, there were those like Concepción Arenal who based their rejection of the idea on humanitarian grounds, saying that the proposed system would render impossible the application of any corrective treatment to the prisoners. Furthermore, there was doubt as to the ability of the central authority to control the possible malpractices that might occur in the colonies (ARENAL, 1877).

Finally, in 1877, at the International Congress of Prisons held in Stockholm, the speakers argued vehemently against the idea of establishing penal colonies (ARENAL, 1896). Therefore, penal deportation in Spain was essentially limited to sending the most dangerous prisoners to territories in North Africa, under a regime of military disciplinary, to be put to work in the tasks of fortification and maintenance of the strongholds. Owing to its consistency with the utilitarian principles of sentencing, the idea of colonisation using convicts persisted for quite some time in the imagination of Spain's penal lawmakers, and the proposal was put forward once again during the Prisons' Assembly in 1931 (GARGALLO, 2011, pp. 135 ff.).

On the other hand, the experiment of the Model prison in Madrid provides the opportunity to study a project which was successfully carried out – at least, at the beginning. It is highly relevant because it is an example of the liberal penitentiary ideal, although it was not the first cellular prison in Spain (which was found-

ed in Vitoria in 1861). The building in itself did not present innovative elements, but it was the first project to involve the construction of a large cellular building in Spain. The Madrid Model prison preserved the ideas of cell-based architecture and the Pennsylvania system of isolation, while it was held up as an example to be followed (ARENAL, 1877; ARMENGOL, 1876).

The Model project, presented by the Minister of the Interior, Romero Robledo, was ratified and written into law with no modifications on 8 July 1876, despite the criticisms levelled at it by those opposed to the total isolation system and the huge economic cost of its construction. (It would involve calling on extraordinary sources of funding, and therefore negate the idea of its being a “model” from the very start, as the rest of the prisons did not have sufficient resources to follow and adapt to the example). Plans were made for the construction of a model prison with a radial arrangement and a cell-based regime, using the architecture of the building itself as a form of control, as noted by authors such as Foucault and Fraile (1987, pp. 11 ff.). The Model prison represented a mixture of correctionalism and retributivism by means of the architecture of the lone building and the ways in which it operated (OLIVER *et al.* 2013; FIZE, 1983; Roth; Robert, 1980). The new prison would function as a municipal depot and a holding institution for those awaiting trial at the municipal and provincial level, and would have installations to enact correctional sentences (of up to six years in length). The King himself outlined the goals of the penal reform, which was to be carried out by '(...) the founding of establishments necessary for our civilisation and our culture (...)'. The prisons should be a '(...) guarantee and defence of property and family (...)'.<sup>3</sup>

Like Burillo Albacete (2011, p. 44), this article points out three basic errors in the plan to use the cellular prison in Madrid as a model. Firstly: the attempt to impose the same distribution on all prisons, without considering the specific needs of each one. Secondly: the combination of the isolation system with that of overcrowded prisons, overlooking the possibility of a classification system. Thirdly: that no account was tak-

<sup>3</sup>Gaceta de Madrid, 06/02/1877, p. 333.

en of the extraordinary amount of resources that had been used in building the Model prison in Madrid – resources which were simply not available in the other cases. The local councils boycotted the modernisation plans that involved taking the new prison in Madrid as a model because they were not prepared to spend such sums of money. Therefore, the project only came to fruition in a small number of municipalities.

## Legislative change

The first few years of the 20<sup>th</sup> Century saw the passing of laws to give the liberal penitentiary system its final character. On 10 April 1900 the Pulido Act was passed, under the terms of which executions were now to be performed inside the prisons. On 29 May 1901, the General Directorate of Prisons and the Penal Establishments Corps (created in 1881) were merged to create the Prison Officers Corps. On 7 June, the so-called Crofton system – the progressive prison system from Ireland – was implemented in Spain, albeit only its first three steps (the fourth, conditional release, would be approved later, in 1914). On 22 June 1901, the establishment of a reform school and correctional facility for minors was approved. On 12 March 1902, the government approved the regulation of exams and competitive entrance tests in order to join and advance within the prison service. On 20 January 1903, the Statistics Department was reorganised with the aim of once again publishing the statistics of the penitentiary system – the Annual of Penitentiary Statistics (*Anuario Estadístico Penitenciario*) – and gaining a better understanding of exactly what went on in prisons. On 13 March, the Criminology School for the training of staff in the penal system was ratified. On 19 May, the implementation of the tutelage regime to prevent crime by rehabilitating criminals was announced. On 15 November 1904, the newspaper *Gaceta de Madrid* (Spanish Official Journal) published the provisional regulation for the Prison Guards Corps. On 7 May 1907, the establishment of a penal colony in El Dueso and another in Figueras was approved, with a view to the transfer of African prisons

(which, as shall see later, was completed in late 1911). On 4 June 1908, the Prison Officers Corps was definitively divided into three sections: technical, auxiliary and optional. On 22 April 1910, the state assumed the payment of prison staff. In general, by means of these measures the penitentiary system tended to become less visible to society, whilst its efforts were focused on the reintegration of prisoners in a Foucauldian sense (i.e. moulding their behaviour to make them socially acceptable). In addition, these changes managed to professionalize the functioning of the prisons, but only in a partial way. As will be seen, the legislation continued to change in the following years, always seeking the same and elusive objective: to develop a technical and professional prison system.

In addition to passing laws pertaining to the operation of prisons, from the beginning of the 19<sup>th</sup> Century there was a clear intention in Spain to overhaul and renovate the old incarceration buildings (FRAILE, 1987). There was also a major upsurge in prison architecture in the early years of the 20<sup>th</sup> Century, a period that saw the approval of projects to build new prisons (OLIVER *et al.* 2013). The penal reform could not be carried out due to the material state in which most of the country's penal establishments were to be found (see TRINIDAD, 1991, pp. 174 ff.). There was talk of the 'overwhelming need, which is fast becoming apparent, to reform the old municipal pre-trial detention centres, replacing ruined buildings which lack basic health and safety conditions with new buildings that conform to the requirements of Penal Architecture [...]'<sup>4</sup>. Faced with the implementation of the convict reform program, it became necessary to reform the network of penal establishments. From 1905 onward, Construction Boards for new prisons began to be set up on a regular basis, on the initiative of the local corporations and with the support of the central government; and between 1907 and 1908, orders began coming in for remodelling to be done in the establishments using the prisoners as workforce.

<sup>4</sup>Gaceta de Madrid, 04/12/1906, pp. 873-874.

## The transfer of the North African prisoners

The transfer of prisoners from the North African prisons is, much like the Model prison project, a prime example of the desire for reform on the part of the Spanish authorities at the beginning of the 20<sup>th</sup> Century. It serves as an example of the theory set out in this article of the development of a liberal prison system in the early 20<sup>th</sup> Century, with clear signs of continuity with respect to the situation in the 19<sup>th</sup> Century.

As stated by the journal *Revista penitenciaria* in 1904, '(in) our prisons, a sort of Hell is developing (...) it is no longer compatible with the expected standards of living (...).'<sup>5</sup> At that time, people were beginning to talk of shame and projecting a bad image – such as, for instance, in the article *Cara al África* (Face to Africa) by Emilia Pardo Bazán in *El Liberal*, 4 January 1904. Also, according to the *Anuario penitenciario* in 1904, the situation of overcrowding in Spanish prisons was simply untenable. With the changes that occurred in penitentiary legislation at the start of the 20<sup>th</sup> Century – especially those inspired by the progressive Irish system, implemented throughout the whole of Spain's penal system – the military prisons had lost their *raison d'être*.

The most pressing issue to be solved in closing the African prisons was the serious problem of the lack of capacity of the penal establishments in Spain to absorb an ever-growing prison population. However, the General Dossier on Penitentiary Reform (*Expediente General para la Reforma Penitenciaria*) pointed to one possible solution: 'that which fits best with the system that has traditionally been followed in our country – that of open-air work, with the solution of the agricultural colony'.<sup>6</sup>

Unlike what happened with overseas colonisation, there was little opposition to penal colonisation in the Iberian Peninsula itself. The most renowned thinkers, Cadalso and Salillas, in spite of their initial opposition to the closure of the prisons, put forward alterna-

tives to make it viable (CADALSO, 1904, p. 36). The arguments in favour were that over half the population of prison inmates was of rural extraction, that the colonies could relieve overcrowding in the prisons and, finally, that this occupation would present less competition to ordinary workers than the use of convicts in industry. In the minutes of the Penitentiary Council (*Consejo Penitenciario*) of 15 July 1904, the reform's orientation toward work in the open air was officially established (BURILLO, 2011, pp. 124 ff.).

After a few hesitations and false starts, it was Maura's government, formed in January 1907, that resolved to carry out the emptying of the North African prisons, proposed in 1904 when the General Dossier on Penitentiary Reform was drafted. The budget set aside for construction and repair work to prisons was dramatically increased, and the effort continued in later years (TRINIDAD, 1991, p. 188). Finally, a project was launched to create agricultural colonies, which would later become the El Dueso Penitentiary in Santoña, located in an area of marshland ceded by the Army that would be drained and prepared for cultivation by the prisoners. The Royal Decree issued on 6 May 1907 officially authorised the establishment of the penal colonies in El Dueso and Figueras for the resettlement of the North African prisoners. At the same time, extension and renovation works were to be carried out at the prisons at Ocaña, San Miguel de los Reyes and Alcalá de Henares. The same year, a progressive three-tier system for El Dueso was approved: the first in an isolation block of cells; the second with a mixed population, in buildings with cells and work and study spaces; and the third, in buildings similar to the model of a home and with a family regime<sup>7</sup>. At the end of 1911, in the wake of the flare-up of violence in North Africa and the transfer or pardon of the prisoners, the penal camps in North Africa ceased to exist.

<sup>5</sup>Revista penitenciaria, 1904, I, p. 20.

<sup>6</sup>Expediente General, 1904, p. XVI.

<sup>7</sup>Gaceta de Madrid, 07/05/1907, pp. 515-516.

## Legislative data collection: the 1913 regulation

The continuous publication of laws and norms at the start of the century made their compilation, review and updating necessary (ROLDÁN, 1988, pp. 116 ff.), which gave rise to a prison law in 1913<sup>8</sup>. This regulation brought together and organised all the penal legislation in force in Spain up until that point, providing the best possible expression of the spirit of the liberal prison system. The 1913 regulation incorporated the new legislation, superseding and updating its most immediate precedents: the General Ordinance on Prisons (*Ordenanza general de Presidios*) of 1834 – the fruit of the reformist ideas of the late 18<sup>th</sup> Century; the 1844 regulations, pertaining to the regime inside the prisons, and 1847, pertaining to the prisons themselves; furthermore, it also included everything pertaining to the municipal pre-trial detention centres, which were still governed by the New Compilation (*Novísima Recopilación*) of 1805 that had been subsequently updated a few times.

The regulation was created with two aims: firstly, to provide the prison wardens with a general organic set of guidelines about how to do their jobs, offering them scientific training in order to do so; and, secondly, to improve the prison services as much as possible.

With regard to the wardens, the corps was reorganised with a view to encouraging them to perform their duties properly. In the wake of the measures approved in previous years, it was clear that the function of prison workers was no longer simply to watch over the prisoners, but instead should include an educational aspect, for which they would need to receive suitable training. This training would be administered by the School of Criminology. Wardens were subjected to a promotion system that was based on the gradual demonstration of their skills and abilities, and also to a carrot-and-stick system designed to drive them to suitably execute the directives handed down by the authorities. The reward-and-punishment system would also apply to the prisoners. The aim was to make prisoners absorb forms of behaviour sanctioned by the authorities as correct, which they should then exhibit automatical-

ly, thus adapting themselves to the teaching system the authorities wished to impose. In the words of the author Víctor Serge, 'The guards and the inmates live the same life, on both sides of the same bolted door.' (SERGE, 1930, p. 45).

The 1913 regulation sanctioned the correctionalist premise that prisoners needed treatment in order to be regenerated and reintegrated into society. The foundations of that treatment would be work and education. In the context of the education imparted, in addition to the school that ought to exist in every prison (a requirement which was very far removed from the reality of the time), the organisation of talks and charity events was encouraged. These activities would become one of the most characteristic features of Spain's prison system in the first thirty years of the 20<sup>th</sup> Century. With regard to work, the work details organised by the administration were continued and expanded, as they were felt the most profitable for the Treasury. The aim of these initiatives was to turn prisoners into a productive tool for society by teaching them a trade that would enable them to live honourably once they were released from prison. The work and the moral instruction received during their incarceration should prevent them from re-offending. In addition, the penal system managed to present itself as a benevolent force, working for the good of the prisoners and society, beyond merely meting out public vengeance (which, it should be noted, was nevertheless still present). However, there are authors (such as AGÜERO and LORENTE, 2012) who have pointed out nuances in this reformist character of nineteenth-century Spanish codification.

## Modernisation on the basis of the 1913 regulation

The 1913 regulation became the basis upon which later action on the penal system was founded. However, it was not long before reforms began to be made. Of the numerous measures which the different governments approved with a view to achieving "prison reform", two appear particularly relevant: the regulation of conditional release (July 1914) and the estab-

<sup>8</sup>Gaceta de Madrid, 11/05/1913, pp. 397 ff.

lishment of reform schools for adults (November 1914).

The progressive system for serving a sentence (Ireland's Crofton system), which had been gradually implemented since its approval in 1901, still required certain legal modifications that had not been introduced with the 1913 regulation. Incarceration should be split into four periods: an initial period of total isolation, a second period of isolation at night with group activities during the day, a third as part of a regime of semi-freedom, and a fourth of conditional release. The last of these periods – conditional release – was of exceptional importance, because that was the point at which the convicts could demonstrate their capacity to rejoin society. However, Spain did not have a law on conditional release, so instead the fourth period had consisted of reprieves and pardons, which were roundly criticised by writers such as Concepción Arenal (ARENAL, 1869) and Pedro Dorado Montero (DORADO, 1915). The conditional release law was approved on 30 July 1914. Thus, the model of the Irish system was finally complete, constituting what promised to be a fundamentally important piece of the puzzle for correcting the prisoner's behaviour. In addition, conditional release expanded the reach of penitentiary control beyond the prison walls. The ex-prisoners would remain linked to the establishment until this final period of the sentence had been served in its turn, even though they were no longer incarcerated.

Also in a correctionalist sense, the establishment of the first reform schools for adults was highly relevant. This took place after the change of direction at Ocaña prison in November 1914 (CADALSO, 1922, pp. 575 ff.; NÚÑEZ, 2014, pp. 254 ff.). The adult reform schools had to be modern centres, with the aim of subjecting the prisoners to a reformist treatment based – as in ordinary prisons – on a punishment-and-reward system, where particular emphasis was attached to work. These establishments were devoted to prisoners' serving sentences of between six months and six years and one day, provided that the prisoner had never before been imprisoned and was between 20 and 30 years of age. They were also where prisoners at the youth reform school in Alcalá de Henares were sent when they reached the age of 23 and still had to remain incarcer-

ated. The prime aim of this type of institutions was to prevent prisoners with short sentences, or minors, from being "infected" by criminal behaviour during their incarceration. The goal was to steer them away from the possibility of a life of crime. Finally, only the adult reform school in Ocaña remained for this purpose, though it was supplemented by the creation of the Women's Reform School in Segovia in 1925.<sup>9</sup>

At the same time as these measures to reform the penal system were being taken, the Prison Officers Corps was also subjected to a campaign of modernisation. From the old view of a prison worker merely being a guard and a gaoler, a new image emerged, which placed greater emphasis on the "civil servant" aspect of the job (CADALSO, 1924). This professionalization of the prison service as a career option resulted in a Weberian process of bureaucratisation of the services. At the same time, the workers developed a strong sense of togetherness, of *esprit de corps*, which would lead to the creation of their own organisation to defend their professional claims and protect their benefits and their field of action. This corporativism was especially consolidated during the dictatorship of Primo de Rivera, due to the authoritarian nature of the regime, which viewed prison as a useful instrument for control. Later, the resignation of Victoria Kent in June 1932 – which was, to a large extent, attributable to pressure from the Prison Officers Corps – enables us to appreciate the levels of power achieved by that collective throughout the first thirty years of the 20<sup>th</sup> Century. After that point, with the aim of creating a "Republic of order", the Prison Officers Corps again came to occupy the dominant position in the penal world that it had enjoyed during the previous dictatorship.

Primo de Rivera's dictatorship was a time of harshness in the penal regime. Social defence, and defence of the political regime, were the main objectives, to be achieved by the strict application of the law and by the use of imprisonment, which reduced the importance of reforming the prisoner. Discipline and vigilance were the main concerns with regard to prisoners, whilst the penal system turned towards the direction of the idea of less eligibility, seeking to prevent crime through fear and increasing the military presence in the

<sup>9</sup>Gaceta de Madrid, 29/08/1925, p. 1254.

prison regime through the appointment of a military auditor as General Director of Prisons<sup>10</sup>. The increased importance of discipline, vigilance, security and, ultimately, order in those years following the publication of the 1913 regulation – which culminated with the Penal Code in 1928 – must be viewed as being connected to Spain's moving closer to the punitive policies exercised by the European fascist regimes and their authoritarian inclination. Primo de Rivera's regime strengthened the most authoritarian features of the prison regime, and encouraged corporativism among the prison workers.<sup>11</sup>

The height of the development of the liberal prison system was expressed in the Regulation on Prisons (*Reglamento de Prisiones*) published in 1930, which compiled all the measures approved since 1914<sup>12</sup>. This regulation is of particular importance because it remained in force (though with certain modifications) until 1948, being adapted to suit the purposes of three very different political regimes, demonstrating the continuity of Spain's penal culture.

Although one of the most relevant points included in the 1930 regulation was conditional release, the majority of the new points incorporated into the document were related to the techno-administrative workings of the penitentiary system, such as the new classification of prisons, the reorganisation of the offices and accounting of the establishments, etc. Also of great importance was the integration into the regulation of measures relating to the prison staff. The aim was for the regulation to become a class "Statute" – the result of the increase in corporativism and bureaucratisation that the Prison Officers Corps experienced throughout Primo de Rivera's time in power and in the years leading up to it. Amongst the measures aimed at the staff, two are particularly noteworthy: the restoration of the School of Criminology, which had been closed in 1926, to improve the wardens' training, and the resurrection

of the technical inspection with a view to increasing the amount of control the government had over prison staff.

## Reform and counter-reform: the Second Republic

With the proclamation of the Second Republic, the penal scene changed – at least briefly (GARGALLO, 2011 and 2016). In April 1931, Victoria Kent was appointed as General Director of Prisons, the first woman in the world to occupy such a post, and in addition the Penal Code of 1928 was annulled<sup>13</sup>. Thanks to her time in the Free Institution of Education (*Institución Libre de Enseñanza*) and the practice of law, Victoria Kent was part of the republican intellectual elite of the late twenties and early thirties. She was proposed to the post of General Director of Prisons by Minister Fernando de los Ríos at the suggestion of the socialist deputy Andrés Saborit (GUTIERREZ, 2001). It should be noted that in her election, not only her training and ability, but also the fact of being a woman was considered, because as was thought then, it was assumed that a woman would have a natural predisposition to tenderness and mercy, something demanded by those politicians who had spent time in prison and knew the conditions in them<sup>14</sup>. The appointment of Victoria Kent gave rise to a great deal of coverage in the press. Everybody seemed to agree that the penitentiary reform so long desired could finally begin. She was characterized by the denunciation of the shortcomings of the prison system and its necessary reform. Victoria Kent always spread 'a humanist discourse, seeking the dignification of the prisoner and especially of the woman.' (HERNÁNDEZ, 2003, p. 39). Many tributes were paid and banquets held to honour the new General Director of Prisons<sup>15</sup>. From her very first days in the job, and as long as she remained in a position of power, Victoria Kent steered the prison system toward the

<sup>10</sup>Gaceta de Madrid, 08/12/1925, p. 1510.

<sup>11</sup>The changes that occurred in the dictatorship's penal system need to be included in the current debate amongst historians about the meaning of Primo de Rivera's dictatorship as a step in the attempts at regeneration, or as a constitutional digression (an idea espoused by authors including Manuel Tuñón de Lara, Carlos Seco Serrano, Javier Tussel and Raymond Carr), or as a differentiated element (as argued by María Teresa González Calbet and Eduardo González Calleja, amongst others).

<sup>12</sup>Gaceta de Madrid, 21/11/1930, pp. 1029 ff.

<sup>13</sup>Gaceta de Madrid, 16/04/1931, p. 198.

<sup>14</sup>See: *Ahora*, 17 de abril de 1931; "Victoria Kent y la nueva cárcel de mujeres", *Crónica*, 17 de septiembre de 1933; and "La dimisión de Victoria Kent y la quiebra de la bondad en España", en *Crónica*, 12 de junio de 1932.

<sup>15</sup>Examples of news about Kent's activity and the celebrations for her appointment: *La Vanguardia*, 21 and 30 April; May 5, 6, 7, 9, 10 and 22; June 7th; July 3 and 25 and October 31, 1931.



strategy of reforming the prisoners, placing particular emphasis on improving their living conditions. Thus, the correctionalist view of prison gained ground in relation to the vengeful, example-setting outlook.

Nevertheless, as previously indicated, the attention the government paid to the prisoners resulted in a more or less direct clash with the prison staff. A whole stream of criticism was formed from the media of different ideologies (HERNANDEZ, p. ) that undermined the image of Victoria Kent for the public and, therefore, its political position. Conflicts with the personnel and accusations of “softness” in the treatment of prisoners, along with a number of major escapes orchestrated in late 1931 and early 1932, led to a campaign being waged by all the political groups against Victoria Kent, who was forced to resign on 8 June 1932.<sup>16</sup>

Following Victoria Kent’s resignation, there was a process of penal “counter-reform”, involving experiments with a return to the punitive and segregationist idea of prison (GARGALLO, 2011, pp. 91 ff.). After Kent’s resignation, two fundamental changes took place. Firstly, the wardens once again became the central element in penal policy, relegating the prisoners to a secondary level. Nonetheless, this did not mean that all the Corps’ desires would become reality. Secondly, the penal issue was re-examined as a technical problem, and as such it needed to be solved by means of a supposedly scientific process. As Foucault pointed out, prison can be seen as something natural and necessary for society. Work continued to be seen as the main tool for reintroducing the convicts into society, and at the same time it served to reduce the prisons’ budgetary deficit. Prison work would be organised by the administrative system, ‘which precludes any exploitation of the prisoner for profit [...]’<sup>17</sup>. Yet the most relevant measure in terms of the new orientation of penal policy after Victoria Kent’s resignation was the approval, on 5 August 1933, of the Vagrancy Act (*Ley de Vagos y Maleantes*). This law meant recognition of the policy of preventative action in the face of a crime, advocated by

the positive school of penal law. Under its terms it was no longer necessary to wait for a person to commit a crime before they could be incarcerated; instead a simple perception of that person as being dangerous would suffice.

This policy, which was in line with others (such as the Penal Code of 1932) approved from 1932 onwards in an attempt to create what was known as a “Republic of order”, was pursued until the Popular Front’s victory in the 1936 elections (CALLEJA, 2014). The almost immediate outbreak of the Civil War made it impossible to implement what had promised to be a period of penal reforms. As pointed out by Oliver Olmo (2009, p. 62), ‘a situation of unstoppable war was reached, and at that point it was discovered that the reality of the facts meant that this punitive culture of a few years earlier was massively outdated [...]’.

## The destruction of the liberal penitentiary system

The armed conflict transformed the prison system into just one more weapon. Prison became a means of repression which was intended to be used to secure the rear-guard and eliminate enemies within the society. In a such a context, correctionalist and reformist ideas lost all meaning in favour of military utilitarianism. When the war ended, the Francoist regime rebuilt a new penal system from the remains of the old one, which has been studied by authors such as Rodríguez Teijeiro (2011) and Gómez Bravo (2007 and 2009). With the arrival of the new regime, the prison system acquired a markedly religious and expiatory nature. However, this paper will be restricted to republican legality.

The new state of war utterly changed the way in which the justice system operated, with its normal function of controlling crime being relegated to a secondary position. On 26 August 1936, Popular Courts (*Tribunales Populares*) were established by decree, with the aim of reducing the time taken for the judiciary

<sup>16</sup>As characteristic examples of this campaign, see: *El Socialista*, May 25, 1932; AZAÑA (2000, p. 511); *Ahora*, February 18, 1932; *Luz*, May 28, 1932; *Crónica*, June 12, 1932. About the escapes: *Luz*, May 19 and 20, 1932.

<sup>17</sup>Gaceta de Madrid, 04/12/1932, p. 1625.

process and to make punishment exemplary (CANCIO, 2007)<sup>18</sup>. They were set up to judge sedition. On 13 May 1937, the jurisdiction of the Popular Courts was extended, with the incorporation of military jurisdiction and the creation of the Popular War Courts (*Tribunales Populares de Guerra*)<sup>19</sup>. The Popular Courts were complemented in October 1936, with the setting up of the Emergency Courts (*Jurados de Urgencia*). These courts had a similar mission to the Popular Courts, but were limited to judging anybody who, in line with social defence theories, 'must be deemed dangerous to the interests of the Government, the People and the Republic', regardless of whether they had committed a crime<sup>20</sup>. Two months later, the work camps for prisoners were set up as the preferred means of internment, with the use of convicts for public service work gaining widespread acceptance once again<sup>21</sup>. With regard to the internment of prisoners in work camps, there is a certain degree of discrepancy between the events related by different historians. Some authors believe that the camps were created as a result of a necessity caused by the war (JULIÁ, 1999, pp. 256-257; GRAHAM, 2002, pp. 350-351), whilst others defend the idea that they were an integral part of the Republicans' judiciary agenda (RUIZ, 2009, pp. 423-424; BADIA, 2001).

Finally, we must mention the creation in June 1938 of a new position for inspection of prisons: the political commissioner. In principle, this was intended to be an exceptional and temporary measure. The commissioners were required to be 'carefully selected, prepared not to shy away from sacrifices and concerns, active, dynamic, with proven ability and a recognised anti-fascist record<sup>22</sup>.' Their mandate was to implement an organisation of the penal establishments that would be largely orientated toward the struggle against fascism. Owing to their functions, the whole of the penitentiary system was to fall under the jurisdiction of these civil servants.

## Penal culture as reflected in the press

If we analyse all the legislation that was passed during the first third of the 20<sup>th</sup> Century in isolation, we can see a gradual evolution toward a penal system that was more humane, modern and liberal. However, the image of the penitentiary system that citizens received, mainly through the press, was different from that obtained from studying the legislation. That image provides us with the possibility of studying punitive culture in Spain at the time.

As previously mentioned, in the late 19<sup>th</sup> Century the need for a reform in the penal system had turned into an idea-force that endured until the breakout of the Civil War. The press was a factor of prime importance in spreading that idea, due to the public projection that it provided it with. The role of the press was notable due to the comparison and analysis it made of the systems that were in operation in other countries (particularly European and American countries) and its condemnation of the poor material and moral state of Spanish prisons. Also, the press was the main means by which the measures approved by the different governments became known to the population. However, not everything that was published was related to the penal reform. There is no shortage of news and articles that give us an idea of the persistent characteristics shown by the Spanish prison system over the course of time, and of its resistance to change.

In general, the newspapers conveyed the idea of Spain's backwardness in terms of the penal system. However, not all the media offered the same information or did so in the same way. Generally, each paper reflected an ideology in its editorial line, and dealt with the news that it published differently on the basis of its own position. The most conservative factions of the press (like *ABC* or *La Vanguardia*) favoured harsh punishment, agreeing with the idea that this approach could help prevent crime by means of the idea of less desirability (i.e. nobody should want to go to prison).

<sup>18</sup>Gaceta de Madrid, 26/08/1936, p. 1479 ff.

<sup>19</sup>Gaceta de la República, 13/05/1937, pp. 675 ff.

<sup>20</sup>Gaceta de Madrid, 11/10/1936, pp. 289 ff.

<sup>21</sup>Gaceta de la República, 27/12/1936, pp. 1118 ff.

<sup>22</sup>Gaceta de la República, 05/06/1938, pp. 1200 ff.

On the other hand, the more leftist newspapers (such as *El Socialista* or *Solidaridad Obrera*) seemed to opt for prisoner reform and to be less inclined to support harshness in the conditions of punishment.

The debate about prisoner reform, which was constantly in the background in the discussion about prisons, reached the press and, by this means, the general population. The right- and left-wing groups agreed, in the late 1920s, on the need to re-educate prisoners, and that society was responsible for driving people to crime – at least in part. Nevertheless, the two positions had different approaches. The left was inclined toward a system in which rewards should motivate the prisoners to change their behaviour, and society's responsibility arose from the lack of economic and educational opportunities from which convicts had suffered. On the other hand, the right focused more on the moralising aspects of prison, with punishment and sanctions seen as the driving force behind changes in the prisoners' behaviour. In the final instance, from the perception of the prison system conveyed by the Spanish press in the early 20<sup>th</sup> Century, we can discern one particular characteristic: variety. Depending on the ideology of each publication, or on factors such as the political or social situation of the time, the newspapers offered information with a different orientation. However, it must not be forgotten that in spite of their differences the idea of social defence by means of punishment was present in all the ideologies to a greater or lesser extent.

## The state of the penal system

In addition to the need for reform, there were two aspects which received special attention in the media: the Prison Officers Corps and the material state of the penitentiary establishments.

The Prison Officers Corps was given a true facelift around the start of the 20<sup>th</sup> Century – so much so that we can speak of the transformation of their image as gaolers, which was resulted in harsh criticisms of the prison workers, such as those expressed by *La Gaceta*: '[...] in addition, this career – which is indubita-

bly the least popular – is well known to be viewed with disdain [...]'<sup>23</sup>, or those published by José Nakens (1908). This process was linked to the increasing bureaucratization of the Corps, which also gave rise to significant corporativism, reflected in the press by the publication of the workers' petitions and demands. The greatest expression of this process in the media was the coverage of the prison assemblies in 1919 and 1931, where the Corps appeared as a united body of professionals showing their concern over the condition of the penal system, as well as expressing their labour needs (GARGALLO, 2011).

The image of the penal establishments followed a very different path. Whilst the prison staff appeared to be undergoing a process of modernisation, the prison building itself was in general portrayed as a place with truly lamentable living conditions (FRAILE, 1987). Cadalso (1922, p. 858) noted that in '1894 the situation in our penitentiary establishments and administration were deplorable (...); but between now and then, they have improved significantly (...)'. The main and recurring problem that can be discerned from reading the press was the lack of sufficient funding for adequate maintenance of the prisons. The first example from the 20<sup>th</sup> Century that we have found was in the newspaper *La Vanguardia* dated 31 December 1902, when a spokesperson for the Prison Officers Corps addressed the governor, telling him of '(...) an impending conflict because of lack of attention paid to the needs of the prisoners in Madrid prison.' The problem was solved by the injection of 10,000 pesetas by the City Council to cover the costs. This would, on many occasions, be typical of the way in which the penal authorities operated. When the situation became untenable – and especially when discipline and order were in jeopardy – the penal authorities would, on occasion, contact the political authorities, to raise the funds necessary to avoid conflicts because of the conditions in prison, which were causing concrete problems.

There were exceptions – especially with the inauguration of new establishments – but the most widespread image portrayed in the news reports of the time is one of prisons in terrible, or even ruinous, conditions.

<sup>23</sup>Gaceta de Madrid, 24/06/1881, pp. 854-855.

This identification of Spain's prisons with dark, lugubrious places and with conditions conducive to the spread of disease reinforced the idea that a reform was desperately needed. The new buildings that were constructed, such as the Model prison in Madrid, were compared with the old ones, such as the Saladero, reaffirming the need for modernisation and emphasising the authorities' intentions and initiatives in this regard. The comparison also highlighted the usefulness of the new buildings as tools to help defend society and, at the same, as spaces conducive to prisoner reform.

## Prisoners in the press

The portrait that the media provided of prison inmates was rather more controversial than that of the prison workers. To begin with, it should be noted that the press and its readers had a voracious appetite for salacious news. Thus it is not difficult to find news items relating to atrocious murders, offering a graphic description of the crime and of the person to whom it is attributed – articles which betray a certain degree of positivism and Lombrosian determinism, as is the case with the detailed media coverage of the murder on Calle Fuencarral between 1902 and 1903<sup>24</sup>. Aside from this type of news, information concerning the prisoners and their lives is scant and lacking in detail. In the best of cases, it is only possible to find references to charity events performed in the prisons, and to the activities of patronage associations and similar bodies, including talks given in prison, banquets and celebrations.

The lives of common prisoners were only considered newsworthy when extraordinary events occurred – such as those we mentioned above, or those relating to disputes, fights or riots. Thus, the free citizens had no indication of what went on day-by-day in the penal establishments, or of the way punishments were applied. This isolation of the world inside prison from the society outside became a characteristic trait of the penitentiary system. Sentences would be served beyond the gaze of the free population, who would feel themselves secure in the knowledge that the convict

was receiving punishment, although they did not know about the conditions in which that punishment was being meted out.

Nonetheless, there was a certain type of prisoners whom it was impossible to isolate from society: the political prisoners. They were viewed as having a greater degree of legitimacy by virtue of the fact that they were in prison for their ideas, rather than for socially unacceptable behaviour. Political prisoners received special attention owing to the support they had on the outside – often from certain newspapers sympathetic to their causes. This phenomenon mostly occurred in the ranks of the left, with the newspapers *El Socialista* and *Solidaridad Obrera* offering prime examples.

In general, we can say that the press created two different types of images relating to prisoners. On the one hand, there were common prisoners, who were presented as ill-adapted individuals in need of attention (education and work) if they were to be reformed and reintroduced into society, becoming productive members of that society. On the other hand, political prisoners would be portrayed as victims of injustice by the media that supported their causes; whereas the authorities, and the press sympathetic to the authorities, tended to downplay their status as political prisoners, and also accuse them of common crimes, with the intention of delegitimising them and diluting the support they received from the population.

## Conflict in prison

Finally, we must refer to the media treatment given to conflicts in prison. On the basis of the news items published in the Spanish press, we can examine two forms of conflict – conflict between guards and prisoners, and prisoner protests – and the authorities' reaction to these problems.

Accusations of mistreatment levelled at the guards by prisoners were frequent in Spain in the early 20<sup>th</sup> Century. On many occasions, such accusations were the only way the prisoners had of attracting social

<sup>24</sup>For example, the 12/07/1902 edition of *Blanco y Negro* published photos of the accused's parents, her home, her son, etc. *Alrededor del Mundo*, 14/07/1902, contained photos of the accused, the crime scene, her transfer to Madrid, and other women who had perpetrated notorious murders in the capital.

attention to their situation. Generally, when an allegation of this type was lodged, the reaction of the authorities was to deny it, although at the same time the wheels would be set in motion for an internal investigation into what had happened. If the accusation was finally disproved, the story would receive prominent coverage in the press on the initiative of the authorities, who thus vindicated their actions and reinforced the image of prison; but if the complaint proved to be correct, the consequences would be less well-publicised, so as not to delegitimise the penal system. Prison had to be a sufficiently harsh punishment to deter crime, but it also had to avoid falling into barbaric practices which could induce feelings of pity for the inmates and aversion to the punishment. The image that the authorities wished to present was one of a well-oiled, technical and perfect machine, so they encouraged positivism.

On the other hand, prisoner protest was another element of conflict which was on occasion portrayed in the press. We can speak of two main types of protest: individual and subconscious protest on one side, and deliberate protest (often on a collective basis) on the other. Subconscious protest would include phenomena such as escape attempts. By these acts, the prisoners manifested their rejection of the system that kept them incarcerated in the most direct way possible: by breaking the control that the system had over them. Nevertheless, although on occasion escapes by prisoners managed to produce significant political consequences, as happened during the era of the Second Republic (GARGALLO, 2011, pp. 60 ff.), they were generally isolated acts, with no political intention or concrete aim beyond the desire to get out of prison. It is possible to classify them as acts of protest in the sense that they prevented the penal system from fulfilling its main objective: to segregate the prisoners from society.

With regard to conscious resistance, we can speak of protests, hunger strikes and riots. These manifestations of discontent were generally premeditated and had very clear objectives, such as improving living conditions in the prisons or protesting against a decision made by the wardens (or sometimes simply expressing the rage and frustration bred by incarceration).

The most usual response to any such attempt at resistance was nearly always asymmetric violence. To begin with, the guards would attempt to suppress the protest and restore order and discipline, and then impose the corresponding punishment according to the application of the rules. The press tended to deal with such news in the same way as they did with stories relating to escape attempts – i.e. a brief treatment giving scant information, except if the events were particularly serious, such as the riot in La Coruña prison in early May 1903, to which *El Imparcial* (14 May) gave extensive coverage. This earned the publication – together with the actions of the government, which gave in to the pressure from the prisoners – harsh criticisms in other newspapers such as *La Época* and *El Heraldo de Madrid* (14 May); or *El País* and *El Globo* (15 May).

The most common form of resistance in liberal Spain was protests, which involved any collective actions intended to prevent the establishment from working normally. The prisoners would refuse to carry out the activities that were expected of them, or would protest against a decision made by the authorities in the establishment, refusing to obey the authorities. The most typical act was to refuse to eat the communal meal (generally as a protest because of the poor food quality) or to go into their cells (normally as a protest against the living conditions in the establishment)<sup>25</sup>. However, the protest often went further than this, developing into riots during which the prisoners hammered on the doors and the furniture in their cells with the aim of generating as much noise as possible. The effectiveness of protests as a means of pressure was variable, given that the authorities could find themselves in a compromising situation, as they could not legitimately intervene with violence if the prisoners did not actually constitute a danger, but the protests' spiralling into riots could provide them with the excuse to intervene violently.

As with peaceful protests that did not resort to violence, the hunger strike also placed the prison authorities in a very difficult position. The typical and immediate resort when faced with disobedience in prisons was violence, repression on the part of the guards in order to force the prisoners to abandon their attitude,

<sup>25</sup>A good example of this kind of protests was the one organised in Puerto de Santa María in 1904 because of the bad quality of the food and some irregularities: *La Vanguardia*, 02/09/1904, p. 6; *El Siglo Futuro*, 02/09/1904, p. 2; *La Época*, 02/09/1904, p. 2; *El Día*, 02/09/1904, p. 2 and *El Imparcial*, 02/09/1904, p. 2

and in more serious cases, the action of the External Guard, the Civil Guard or even the army. Yet with a hunger strike, this course of action was not appropriate because of the poor image that it would convey to both national and international public opinion. Hence, hunger strikes were used as a tool on numerous occasions, especially by politico-social prisoners, who more clearly understood how useful they could be.

Finally, physical violence was always of particular importance in prison protest. A good example of this was the riot in La Coruña Prison in early May 1903 that was mentioned above. The penitentiary system is a violent institution, which is maintained and functions by using a series of instruments of coercion. In spite of all the theory about correctionalism and the humane treatment of prisoners, prisons were run on the basis of a punishment-and-reward system which, in addition, placed special emphasis on the punitive aspect. As Foucault indicated, in order to produce a modification in the behaviour of the inmates, the prison authorities resorted to controlling all of their actions (insofar as they were able to do so). The way in which the authorities prevented a prisoner from doing something undesirable was simply to exercise coercion. Any initiative besides those permitted by the authorities was punished, and the ultimate resort for instilling obedience was the ability of the authorities to employ violence, as reflected in the National Penitentiary Congress (*Congreso Penitenciario* Nacional) of Valencia in 1909, whose second section discussed discipline in prisons and the legitimacy of physical punishment.

Inevitably, convicts were influenced by that atmosphere of violence and coercion. Like so many other attitudes learnt in prison, violence would be absorbed by the prisoners, as it formed part of their daily lives. Thus, it also became a means of protest: if the authorities achieved their objectives by imposing their will on the prisoners by force, the prisoners could use the same methods to achieve their own goals. Thus, riots became the most direct and the simplest way for prisoners to assert their rights and protest against the poor living conditions. The authorities' reaction to these deliberate protests was, in many cases, to resort to asymmetrical institutional violence. With this violence, two goals were pursued: firstly to resolve the problem of the protest, and secondly to make an example of it in order to prevent new problems. Although in many cases, the

former objective was achieved, the latter generally was not. Institutional violence did not serve to prevent protest or violence by the prisoners, in the same way that punishment did not serve to prevent crime.

## Conclusion

In view of the analysis outlined here, we can state that the penal system in place during the Restoration period in Spain developed in a reasonably logical fashion and continued until its culmination during Victoria Kent's brief period in office (1931-32); this was despite the setbacks suffered during Primo de Rivera's dictatorship and at other specific times of greater repressive pressure. Throughout this process, the rights to which prisoners were entitled gradually increased, as did the concerns over their living conditions. In general, we can speak of three main ideas in the development of the liberal prison system: firstly, the improvement of prisoners' living conditions and the interest in their re-education; secondly, the increase of professionalism of the staff in the prisons; and thirdly, the reform of the penal establishments. However, the distinct ideologies continued to defend different ideas in terms of the application of the system, from the discipline and example-setting in search of the defence of society and order advocated by the right wing, to the more correction-oriented stances of the left, in search of social reintegration.

The reigning punitive culture in Spain underwent a major change due to the increased sense of disorder and insecurity during the final phase of Primo de Rivera's dictatorship and the first year of the Second Republic. The development of the liberal prison system ceased in the summer of 1932 as the idea of the need for a "Republic of order" gained popularity, and especially later on with the repression of the protest movements and social conflict in 1933-34. Ultimately, the Civil War culminated the process of destruction, as it turned prison into an instrument at the service of war in order to help control the rear-guard. The system began to display clearer signs of repression, segregation and control of potential threats to social order, abandoning the lines of development that had been marked out by classic liberalism (GARGALLO, 2016).

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