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Cultures of transparency in carceral governance: Lessons from the global North/South divide

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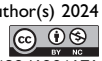
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Hollis Moore[1], José A. Brandariz[2], Vicki Chartrand[3], Jennifer M. Kilty[4], Dawn Moore[1], Máximo Sozzo[5] and Sarah Turnbull[6]

Abstract

This conceptual article offers new ways to map and understand the role of transparency in carceral governance. Mobilizing our expertise in our respective fields of study, we comparatively reflect on case studies of carceral transparency in Argentina, Canada, and Spain. In each, we decentre forms of transparency favoured by carceral authorities by considering the range of mechanisms and actors at play in the production of transparency. Taken together, our accounts of cultures of transparency in prisons and migrant detention facilities in the global north and south highlight absences and presences of different means of generating transparency across carceral sites and denaturalize northern and state-centric ideas about carceral transparency. Ultimately, our juxtaposition of three cultures of transparency reveals the range of means of generating carceral knowledge and the potential scope for its dissemination. Amidst persistent human rights violations, this work underlines the need for further southernized research on transparency to shape possibilities of carceral governance.

Keywords

Cultures of transparency, counterveillance, carceral governance, prisons, migrant detention

[1]Carleton University, Canada
[2]University of A Coruña, Spain
[3]Bishop's University, Canada
[4]University of Ottawa, Canada
[5]National University of Litoral, Argentina
[6]University of Waterloo, Canada

Corresponding author:
Hollis Moore, Department of Law and Legal Studies, Carleton University, 1125 Colonel By Drive, Ottawa, Ontario, K1S 5B6, Canada.
Email: HollisMoore@cunet.carleton.ca

Introduction

Prisons and other carceral institutions, like migrant detention centres, are often characterized as the quintessential embodiment of Goffman's (1961) 'total institution' in their near absolute control of the lives of incarcerated people. While there are scholarly debates about the 'totality' versus 'porosity' of carceral spaces (see Ellis, 2021), an important concern is the attempted monopoly carceral authorities hold over the flow of knowledge in and out of the institutions they govern. Carceral authorities typically exercise significant control over the generation and circulation of information about the quotidian operations of these institutions. In the context of a 'transparency-obsessed world' (Hetherington, 2011: 242), in which states regularly appeal to economies of transparency (Owetschkin et al., 2021), it is unsurprising that many carceral authorities claim to be open and accountable, especially when things go wrong behind the walls (Penal Reform International [PRI], 2021). Yet, as we show in this article, some carceral authorities' claims to 'openness, transparency, and a willingness to explain the rationale behind decisions' (Correctional Service of Canada [CSC], 2012), including through formal access to information (ATI) requests (e.g. Luscombe and Walby, 2017), must be scrutinized. This scrutiny must also ask why transparency is often equated with access to documents given that people and their lived experiences are vital sources of information crucial to 'seeing in' to a carceral site. Yet, entry into carceral spaces and gaining access to incarcerated peoples and carceral information is restricted in certain contexts, as it is in the case of Spain (Ballesteros-Pena, 2019), and nearly impossible in other jurisdictions like Canada, where authorities espouse a commitment to transparency but often fail to deliver (Ellis, 2021; Martel, 2004; Wacquant, 2002; Wright et al., 2015). In contrast, in more overtly authoritarian environments, such as Argentinean prisons, where record keeping and official release of statistics and reports are less reliable and accessible and where a grammar of transparency has not been officially embraced, the day-to-day operations suggest a more expansive, unofficial porosity. Shifting and inconsistent institutional practices of releasing information (e.g. day-to-day operational records, statistics, reports, policies, etc.), especially in northern jurisdictions, mean that carceral institutions claiming transparency operate under a liberal veil of secrecy that gives an appearance of openness as authorities actively circumscribe the production and dissemination of carceral knowledge (Moore and Hannah-Moffat, 2005). Given these concerns and the variance in carceral transparency, in combination with the scant comparative research in the field, we draw on our substantive research in our respective carceral fields and jurisdictions to offer a conceptual map for comparative research on carceral transparency that is also the starting point for the Prison Transparency Project,[1] our recently launched international study.

Carceral institutions such as prisons and migrant detention centres are, at least in theory, accountable[2] to national and international laws, with many being subject to institutionalized oversight from domestic bodies like ombuds offices as well as supranational entities like the Subcommittee for the Prevention of Torture, a human rights body of the United Nations (UN) created by the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which was approved by the General Assembly in 2002 and implemented since 2006. Yet, while carceral institutions may be legally bound to provide both care and custody, and are subject to varying types and degrees of regulatory oversight, systemic human rights abuses, poor conditions of confinement, and failure to disclose pertinent and accurate information continue to be reported across the globe (PRI, 2021). Certainly, human rights violations are endemic to the carceral settings we study. This fact raises important questions around the nature and effects of counterveillance, which includes but is not limited to official oversight, as well as the extent to

which carceral laws and rules structure the flow of information to serve carceral interests while reshaping the experiences of incarcerated people and their advocates. Where rules mandate institutional transparency, the rule of law may be paradoxically less observed.[3] We unravel this paradox through an exploration of carceral institutions in Argentina, Canada, and Spain that shows how prisons and migrant detention centres are shaped by transparency mechanisms and transparency speak while simultaneously obfuscating harmful, violent, and even lethal carceral practices. Crucially, we also highlight subordinated and overlooked ways of producing transparency with the potential to challenge harmful carceral practices.

In this article, we first canvass the work of scholars on cultures of transparency to map some of the parametres and influencing contours of the field. We then infuse this scholarship with an overview of the activities of the Group d'Information sur les Prisons to show how counterveillance is a pivotal component in cultures of transparency that offers an alternative entry into questions of carceral governance and transparency (Mathiesen, 1997; Sykes, 1958; Welch, 2011). Finally, we turn to our respective jurisdictions using explorations of prisons in Argentina and Canada and migrant detention in Spain to illustrate the cultures of transparency found in different carceral sites.

Our work shows how counterveillant actors can shift the focus and production of carceral knowledge in ways that critically illuminate the paradox of carceral transparency, as discussed above. While offering a necessarily general overview, our comparative analysis suggests that 'official' (i.e. state-defined) mechanisms of transparency (e.g. ombuds and ATI mechanisms) often operate to uphold ruling relations of carceral transparency characterized by asymmetry and selectivity, whereas the contestation and struggles of unruly counterveillant actors (e.g. investigative journalists, community-based advocates, critical scholars, activists, incarcerated persons, and their affective communities) may yield more robust and meaningful scruitiny. Carceral authorities often downplay, conceal, discredit, undermine, or otherwise 'neutralize' (Mathiesen, 1990) counterveillance efforts that threaten not only to expose carceral realities but challenge and shift ruling relations of transparency. Nevertheless, counterveillance is a significant component of an ongoing struggle over the cultures of transparency constructed in and around carceral institutions. By including knowledge from the global south to denaturalize 'metropolitan thinking' (Carrington et al., 2019; Connell, 2007) about transparency, we usurp the colonial mythologies that northern countries are more civil and humane due, in part, to the superior cultures of transparency they ostensibly offer (Kalant, 2004; Moore and Ben-David, 2021; Rault, 2020). Given the diverse potential of counterveillant actors to shift the production and circulation of carceral knowledge and information, we conclude that it is important for scholars to examine how carceral transparency is constituted and negotiated and underline the need for more comparative research in this field.

Conceptualizing cultures of transparency

In a wide range of situations, elites, experts, and other reformers in many liberal democracies have embraced transparency 'as a panacea for the ills that a concentration of power can imply' (Garsten and Lindh de Montoya, 2008: 1). Where transparency is often associated with freedom of information, responsibility of disclosure, and enforcing accountability, critical scholars have assessed the transparency project as another form of panoptic visibility (Berger et al., 2021) fraught with inherent ambivalences (Teurlings and Stauff, 2014). We explore how transparency can be officially designed in a way that paradoxically facilitates and even routinizes abuse, violence, and human rights violations in carceral settings.

Meijer (2014) observes that ideas around transparency have a long history in western political thinking. Such ideas are enshrined in carceral sites through, for example, Bentham's (1995) ideas about the panopticon and the utility of visibility. The idea that transparency is a virtue of government gained prominence in the second half of the twentieth century, crystalized in the global north's public management rationales that emerged in the 1980s and 1990s. Hetherington (2011) explains that a commitment to transparency was central to two international governance reform projects that were undertaken in relation to Cold War discourses. The first sought 'good governance' (e.g. World Bank, 1999) by equipping citizenries with transparent information and/or reducing censorship and propaganda to cultivate 'democratic participants who could rise from under the yoke of communist and dictatorial regimes' (Hetherington, 2011: 242). The second posited greater access to information as a means to empower economic actors to make more rational choices and innovate market-driven solutions (Hetherington, 2011: 156) to achieve economic development. Proponents of both projects imagined the rational and free 'citizen-consumer' (Hetherington, 2011) as the means and ends of optimal systems of government. The carceral subject, however, is irreconcilable with liberal imaginations of transparency.

In relation to carceral institutions globally, transparency has been inconsistently embraced as an organizing principle and administrative goal. As we detail below, unlike Canada, neither the Argentinean prison systems nor Spanish migrant detention facilities have embraced transparency as a core value. Instead, transparency is generated by the agonistic relations of the varied actors involved in struggles in the carceral field. Yet, despite regional differences, carceral institutions tend to share a common logic that complicates their relationship to the prevailing 'ideology of transparency' (Ballestero, 2012). While liberal transparency projects aim to improve society by enhancing individual freedom, carceral institutions purport to serve the 'greater good' by circumscribing individual freedom of people who are constituted as threats to liberal democracies because they are ostensibly incapable (or not yet capable) of good self-governance. Within democratic transparency regimes, people are constructed either as subjects with the right and responsibility to generate, disseminate, and act upon information or, alternatively, as objects of scrutiny (Dotson, 2014; Mario and Kilty, 2024). In carceral settings, the perceived dangerousness of incarcerated people underlies their surveillance by state actors, resulting in an asymmetrical and exclusionary form of securitized transparency. Importantly, dominant relations of carceral transparency may contribute to the 'inappropriate exclusion'[4] of incarcerated people from processes of knowledge generation and dissemination, except as objects of the carceral gaze (Foucault, 1977). Ultimately, pejorative ideas about incarcerated people as inherently dangerous and untrustworthy challenge efforts to transform carceral transparency into regimes that would mitigate and ideally arrest state violence.

Just as the people confined in carceral settings are differentiated and subordinated in relation to 'citizen-consumers,' carceral settings are distinguished from their procedurally democratic contexts as exceptionally dangerous sites well suited to the 'government of unfreedom' (Hindess, 2001), where state authorities try to strictly control the circulation of both bodies and information. As Hindess (2001: 94) argues, 'the resort to authoritarian rule in certain cases is a necessary consequence' of (neo)liberal understandings of the commitment to liberty. Whereas some carceral settings are more overtly authoritarian than others, prevailing concerns with the maintenance of institutional order and the prevention of escape are common features that favour a securitized (authority-centric, selective, and strategically designed) kind of 'official' transparency. Although liberal ideology envisions transparency as a corrective to existing arrangements, specifically to 'democratic deficits of existing forms of law, bureaucracy, and even subjectivity' (Ballestero,

2012: 160), such considerations are regularly subordinated to security in carceral settings (Simon, 2012: 28–29). In contrast to other environments that have been diagnosed as transparency deficient (like hospitals or care facilities), increasing carceral transparency is cast as a threat to institutional security and society at large, thus necessitating its intensive management (Watson, 2015). Within an overarching framework of democratic commitments, carceral systems are accountable to a legislative mandate of security, correction, and/or reintegration that transposes dominant expectations of transparency, legitimizing highly selective filtering of information and access (Mario and Kilty, 2024) that is often justified as protecting privacy rights.[5] Herein lies the paradox of transparency: carceral governance favours performances of official transparency that work to uphold a veil of secrecy.

Although prisons and migrant detention centres may seem opaque from the perspective of concerned outsiders, they could be more accurately described as sites of asymmetrical inspection and surveillance. Within an asymmetrical arrangement, carceral authorities selectively determine the type and degree of visibility (Calavita and Jenness, 2015) through mechanisms of transparency such as blurred relations with watchdogs, the development of 'in house' research (Lehalle and Kilty, 2023), and limited releases of (disaggregated or redacted) data. There is also the risk that transparency becomes a spectacle (see, e.g. Teurlings and Stauff, 2014), 'a "theatre" that hides more than it reveals' (Hansen et al., 2015: 120), such as through curated or 'cleansed' carceral tours (e.g. Piché and Walby, 2010, 2012) and penal tourism (e.g. Chartrand, 2017; Welch, 2012).

There is, then, a contradiction between the asymmetrical transparency arrangements that are usually favoured by carceral authorities and counterveillance, which *reverses trajectories of observation* through the monitoring of those who have conventionally served as monitors of others' conduct (Goldsmith, 2010; Welch, 2011) as well as by elevating and validating the lived experiences of prisoners as vital and reliable sources of information (Wright et al., 2015).[6] We take inspiration from Michel Foucault's work with the Group d'Information sur les Prisons to support our argument for the importance of counterveillant transparency mechanisms that position carceral authorities, the original agents of observation, as objects of scrutiny.

Foucault and the Group d'Information sur les Prisons (GIP)

Whereas transparency is often credited to official mechanisms that are organized, or endorsed, by state actors, there are many possibilities for infiltration and access. A classic example of a counterveillant approach to carceral transparency was spearheaded by an organization in which Foucault played an important role. In the 1970s, Foucault and the GIP engaged in 'optical activism' through information gathering (Foucault et al., 1971; Welch, 2011) to shift transparency in French prisons, deploying two tactics of counterveillance. First, the GIP endeavoured to publicly expose intolerably harsh conditions of confinement, including abuses of state power, which were deliberately hidden from public view. Second, the GIP set out to 'watch the watchers' by placing specific state officials, and their penal policies and practices, in the limelight. These counterveillant tactics were deployed to reduce *the asymmetry of official carceral transparency* and foment public debate. Although the GIP asserted that it was not geared towards prison reform, by creating a space for incarcerated people to voice their experiences and by amplifying these voices, they altered the transparency of the state's penal operations. Using visitors, the GIP distributed a questionnaire about conditions of confinement to incarcerated people and denounced official records as untrustworthy (Foucault, 1971/1994). The GIP (1971/2013) then published a series of pamphlets to communicate findings from the questionnaire. In this way, the GIP, which resembled 'civil rights

activism more so than elitist reformism' (Welch, 2011: 311), broke from a long line of prison reform efforts that typically involved high-status campaign leaders who collaborated closely with, or were embedded within, government.

Recently, a new wave of transparency scholarship has started to examine insurgent bottom-up transparency initiatives, including 'guerrilla auditing' (Hetherington, 2011), 'counter-accounting' (Maclean, 2014), 'sousveillance' (Mann and Ferenbok, 2013), and the 'optical activism' of 'counterveillance' (Welch, 2011). Such research shows how neoliberal tools of governance underlie the emergence of unruly political collectivities that appropriate and innovate transparency mechanisms for their own, sometimes emancipatory, purposes. The GIP's counterveillant efforts reveal a variety of mechanisms through which transparency can operate and provide an early illustration of how different actors can alter carceral transparency through various sanctioned and insurgent interventions. Inspired by and building on this history, we move our international gaze across institutional, organizational, national, and sub-national boundaries to elucidate the complex politics of carceral transparency.

Cultures of transparency in three settings

Drawing on our substantive research in our respective carceral fields and jurisdictions, we offer reflections on contemporary cultures of transparency in Argentina, Canada, and Spain. These jurisdictions, which constitute the focus of our ongoing comparative study of carceral transparency, are useful comparators given the colonial connections between Argentina and Spain, the governmental similarities (federated systems) between Canada and Argentina, and the culturally distinct regions within Canada (Québec) and Spain (Catalonia and the Basque country) whose carceral rationalities are often out of step with their respective nation-states. These jurisdictions also offer an excellent vantage point from which to examine the multi-scalar nature of cultures of transparency. For example, whereas both Argentina and Spain have established national and regional/provincial mechanisms for the prevention of torture to fulfil obligations arising from signing and ratifying the UN OPCAT, which aims to ensure 'independent oversight as envisioned by international human rights standards' (Malischewski and Zinger, 2023), Canada has not signed or ratified the protocol despite announcing its intention to do so in 2016. Notably, the Canadian Human Rights Commission and Office of the Correctional Investigator, two key prison watchdogs, jointly published an open letter addressed to the Ministers of Foreign Affairs, Justice, Public Safety, and Canadian Heritage as recently as November 2023 requesting that Canada ratify the optional protocol (see (Malischewski and Zinger, 2023). To date, the political will remains lacking. The inclusion of Argentina in our cross-jurisdictinal comparison of carceral transparency creates the opportunity to examine the northern epistemological domination in carceral studies, revealing the unidirectional flow of knowledge and 'best practices' from the 'civilized' north to the 'developing' south (Carrington et al., 2019; Moore and Ben-David, 2021).

Argentina

Over the past 30 years, the Argentinean prison population has significantly increased. In 1992, there were 62 prisoners per 100,000 inhabitants; by 2022, there were 227 prisoners per 100,000, effectively tripling the incarcerated population. This exponential growth has worsened long-standing problems of overcrowding, appalling living conditions (e.g. absence of heating and hot water, scarce and low-quality food), and violence between prisoners and guards against prisoners (Sozzo, 2007,

2022; Gual, 2015). In 2021, the national prison monitoring organization, Procuración Penitenciaria de la Nación (PPN), documented 43 prisoner deaths, 11 of which were of a violent nature, and 201 cases of torture and maltreatment in federal prisons, which confine only 10% of the prison population, with the rest incarcerated by the 23 provincial prison services (PPN, 2022).

Since the transition to democracy from the last civic-military dictatorship (1976–1983), the federal and provincial prison services have not undergone structural reform processes aimed at democratization, successfully resisting different attempts in this direction. Prisons remain heavily militarized and are permeated by authoritarian legacies within their organizations, cultures, and practices (Sozzo, 2013). For example, the Federal Penitentiary Service, which aims to embody the image of a 'modern' prison administration and functions as a model for the provincial systems (Hathazy, 2016), still uses a largely untouched legal framework sanctioned in 1973 by a dictatorial regime. Both federal and provincial prison services have high levels of secrecy, and there are few signs that the grammar of transparency present in neoliberal reforms in other state sectors has penetrated carceral governance.

Despite this situation, three clusters of practices have emerged with the aim of opening up the prison and generating flows of knowledge through its walls. First, since the pioneering experience of the University of Buenos Aires UBA XXI Program, initiated in federal prisons in 1985, several educational initiatives have been implemented by national universities, necessitating the daily circulation of professors and students within carceral institutions. These widespread and routine arrangements enable regular and relatively unmediated interactions between non-incarcerated scholars and incarcerated people that are atypical in Canada and Spain. Argentina's prison-university initiatives were constructed through formal agreements with political officials but frequently suffered institutional obstruction by prison authorities. By 2020, 11 public universities offered degree programmes, and another 23 had developed different educational and cultural activities inside federal and provincial prisons (Beltrán et al., 2016; Daroqui, 2009; Manchado et al., 2019). Within the framework of these university programmes, actions that produce carceral transparency have multiplied over time and are based on direct and sustained contact with, and activation of, people who are incarcerated. Such actions include, but are not limited to, the production of radio programmes, podcasts, videos, films, literature, and poetry that reveal different aspects of prison life; the generation of mechanisms of free legal assistance for incarcerated people, helping them to prepare and present administrative and judicial petitions; and the creation of a trade union of 'workers deprived of their freedom' that attempted to be officially recognized and, at one point, produced important changes in relation to work activities inside federal prisons (Gual and Sozzo, 2023).

Second, there is an increasing number of state institutions charged with the oversight of carceral facilities outside of the administering Executive Powers on which prison services depend. These external monitoring mechanisms have developed different practices of carceral inspection, receiving prisoner complaints, and human rights litigation against prison services. In 1993, the PPN was created as an oversight body for federal prisons, initially located within the National Executive Power, but under the purview of the National Congress since 2003. In 2013, to fulfil obligations arising from the OPCAT, Law 26826 established the National Committee for the Prevention of Torture (CNPT); recognized the PPN as the federal mechanism for the prevention of torture; and mandated the creation of prevention mechanisms in each province and the city of Buenos Aires. Before the enactment of the national law, some local mechanisms had already been created at the provincial level, starting with the Committee for the Prevention of Torture of the Province of Chaco (2011). In the Province of Buenos Aires, the Commission for Memory – a state body

related to the protection of human rights – began to inspect and monitor prison conditions in 2005, formally becoming the provincial mechanism for the prevention of torture, through a resolution of the CNPT, in 2019. Twelve other jurisdictions have since created their own mechanisms with diverse compositions and resources. In the 10 provinces that still do not have a local mechanism for the prevention of torture, the CNPT, which began to operate in 2017, has been quite active. In some jurisdictions, such as the Province of Santa Fe and at the federal level, Public Defense Offices (state bodies that are part of the Judicial Powers but with a strong degree of autonomy) play an active and interventionist role in the protection of prisoners' rights through, for example, prison inspections and bringing writs of habeas corpus to the courts. These state institutions produce annual and other reports on different problematic situations and usually make recommendations for change to political and prison authorities.

Third, there has been significant growth in recent years of the number of community-based organizations (e.g. feminist organizations or sports and arts-based groups) that carry out daily activities inside Argentinean prisons. For example, in the Province of Santa Fe, *Mujeres Tras las Rejas* (Women Behind Bars) is developing different cultural and work activities with women prisoners and ex-prisoners.[7] In the national capital of Buenos Aires, *Cooperativa Esquina Libertad* (Freedom Corner Cooperative), which was built by people with lived experience of incarceration, develops workshops with federally incarcerated people and work opportunities for released people.[8] Projects such as these enable two-way flows of knowledge, with different levels of dissemination, generating greater visibility of what happens inside carceral institutions.

This complex array of actors, processes, and practices has generated carceral transparency of different kinds, 'from below' (e.g. community-based organizations and university programmes) and 'from above' (e.g. state institutions of external oversight). In some cases, producing transparency is the fundamental objective of these actors and initiatives, whereas, in others, it is an outcome of projects geared toward other ends. In most cases, the starting point involves contact with prisoners and learning from their experiences. These counterveillant projects, which in some cases have been formalized by law, were born of, and structured by, conflicts between prison authorities, political elites, and state and non-state agents across time and space. This complex array does not necessarily translate into an effective reduction of the various negative characteristics of carceral spaces in Argentina, but it does define a field of dispute and struggle.

Canada

Canada's federal prison management regime is governed by risk logic and an ethos of security and punishment that is cloaked behind a liberal veil of structured choice (Moore and Hannah-Moffat, 2005). The benevolence of this liberal performance shrouds punitive and harmful correctional practices in rehabilitative and management discourses that espouse a degree of selective visibility (Martel, 2004; Moore, 2007; Wright et al., 2015). In this sense, Canada's national brand of carceral management is largely one of positive social change, rehabilitation, and institutional transparency despite the routine rights violations that occur in carceral sites (Arbour, 1996; Cole, 2020; HRTO v. Ministry of Community Safety and Correctional Services, 2013). This paradox of transparency in Canada is clearly evidenced in several commissions of inquiry, reports, and in the death of 19-year-old Ashley Smith, which we discuss below as an exemplar of contemporary human rights violations.

At the federal level, the Office of the Correctional Investigator (OCI) is the official watchdog that reviews and investigates complaints made by incarcerated people and, in theory, brings complaints to

a resolution. The first Correctional Investigator was appointed by the Solicitor General in 1973 to investigate and make advisory recommendations on prisoners' complaints, and is now mandated through the 1992 *Corrections and Conditional Release Act*. Notably, the OCI does not have legal authority to enforce compliance of its recommendations. Written as the country pursued a seat on the UN Human Rights Council, Malischewski and Zinger's (2023) open letter requesting that Canada ratify the OPCAT observes that 'Canada's current oversight and monitoring system is inadequate' and that it 'is predominantly reactive, and lacks a robust, coordinated and proactive framework of monitoring and inspection'. The sub-text around the demand for a proactive framework intimates a desire for the OCI to have the legal ability to enforce the recommendations they make.

Canada's provincial/territorial prisons are overseen by ombuds offices in each province/territory that have large mandates over multiple government institutions, including child welfare, youth detention, public schools, social services, and hospitals, and also have no enforcement capacity which limits the scope and range of what can be accomplished. For example, Ombudsman Ontario (2013) released a report entitled *The Code*, an investigation into the Ministry of Community Safety and Correctional Services' response to more than 350 allegations of excessive use of force against prisoners that revealed gross human rights violations as well as a code of silence that hid the violence from view. Since the release of the report, a justice transparency group, Tracking (In)Justice, continues to press the province to establish an independent oversight body, similar to the OCI, to address deaths in custody for which little information is made publicly available (Hasham, 2023).

Counterveillant mechanisms of concerned advocates often play a significant role in generating and disseminating information about such deaths in Canada. For example, on 15 December 2016, Soleiman Faqiri died in Ontario's Central East Correctional Centre. Despite obvious injuries and eyewitness accounts of a physical beating, the coroner initially declared the cause of death to be 'unascertained'. After more than five years of advocacy on the part of the Faqiri family and allies who led the Justice for Soli campaign, Ontario's Chief Forensic Pathologist reassessed the coroner's verdict and changed the finding, reporting that the death was the result of being held face down while being restrained and beaten by six guards (TVO, 2021).

The circumstances around Ashley Smith's death in federal prison similarly raises flags about the ruling relations of carceral transparency, demonstrating how counterveillance – which includes official mechanisms as well as more informal, often unstanctioned processes of producing transparency – exposed the event. In 2007, Smith killed herself in Grand Valley Institution (GVI), one of five federal prisons for women in Canada. As Smith self-asphyxiated on the floor of her suicide watch cell, eight guards watched and CCTV recorded her death. This was not Smith's first act of self-asphyxiation, and the guards were under direct order not to intervene by entering her cell and cutting off the ligature until Smith lost consciousness. Daily use of force reports ensured that prison authorities – across the country, including national headquarters in Ottawa – were aware of Smith's conditions of confinement. Yet, it was through the intervention of Smith's family, lawyers, and NGOs such as the Canadian Association of Elizabeth Fry Societies, as well as an ATI request filed by the Canadian Broadcast Corporation (CBC, the national, publicly funded broadcaster) for the video footage, that details of Smith's conditions of confinement and death were made public. Public reaction to the footage skewed heavily to shock and outrage.

The first Inquest into Smith's death failed amid allegations that Correctional Service Canada (CSC) was deliberately withholding information and obstructing the investigation. CSC filed several motions, including to seal video materials and documents related to Smith's forced restraint and sedation in a Québec prison, which were all denied by the presiding coroner. The second

inquest (2013) revealed a trajectory of forced isolation, violence, humiliation, and 17 institutional transfers over the 11 months Smith spent in federal custody, to which she was transferred at the age of 18. One video shows Smith on an airplane during an institutional transfer restrained in her seat with handcuffs on her ankles, her wrists duct-taped to the armrests of her seat, and a mesh 'spit guard' over her face. At one point, an officer threatens to place duct tape over her mouth. Another video shows Smith handcuffed to a gurney while wearing a 'baby-doll' garment, a thin poncho suicidal prisoners are forced to wear because it cannot be torn or tied. Smith makes several requests to a nurse off-camera to change her tampon. The nurse responds that she will have to wait. A few minutes later, six guards in riot gear surround Smith as the nurse approaches to give her an involuntary psychotropic injection. It was only through the combined efforts of official and unofficial carceral players that the second inquest resulted in a homicide verdict, although no individual would be held accountable. As we write this article, the inquest into the death of Terry Baker, who also died at GVI in July 2016, has been postponed for a second time as a result of the CSC's refusal to produce documents that have been ordered for seizure by the coroner to further the investigation of the case.

Over a decade before Smith's death, the CBC similarly used ATI requests and eventually went through the courts to obtain footage of an hours-long cell extraction and strip search of six female prisoners by an all-male riot squad in the now-closed Prison for Women when the CSC filed legal motions to prevent public viewing. Like Smith's case, the footage showed guards in battle gear rousing women from their sleep, cutting and ripping clothes off their bodies, and forcing them to stand naked against a wall as guards terrorized them with batons while barking orders and refusing the women's requests to have something to cover their bodies (Arbour, 1996). While these three cases represent some of the more well-documented and public instances of carceral abuse, and the counterveillant conditions of its exposure, many other cases of abuse have also come to light through various counterveillance efforts, despite authorities' efforts at obstruction (see Chartrand, 2015; Kilty, 2018).

In Canada, there is only one pathway for non-carceral actors to gain entry into the prison: by applying to the respective federal or provincial/territorial prison authority. In practice, these application processes gatekeep and prevent different forms of access, including family visits, lawyer access, and external research. While some researchers do manage to gain access, access largely depends on the topics, objectives, methodologies, and epistemological orientations of the research, which must be aligned with the interests and visions of carceral authorities (Mario and Kilty, 2024; Martel, 2004). When ATI requests are filed, if anything is received, the documents provided are typically heavily redacted, rendering them incomprehensible and often unusable (Mario and Kilty, 2024; Walby and Larsen, 2011). Mario and Kilty (2024) detail their respective attempts to secure access to federal prisons for external research and, when denied access, to secure information and documents from the CSC, noting that they did not receive the requested materials in the legislated timeline of 30 days, but in 18 months, with heavy redaction, and only after fielding repeated requests to narrow the scope of the requests and by filing complaints with the Offices of the Information Commissioner and the Privacy Commissioner for aid. Only official investigators, ombuds persons, judges, lawyers, experts serving the courts, and Members of Parliament are guaranteed access to federal (not provincial/territorial) prisons and are accommodated, to varying degrees, with access to internal research, reports, and information not accessible to the public. Yet, as seen in the Smith case, even this scant access is actively and persistently resisted by carceral authorities. Although official monitors routinely inspect carceral sites, they cover a vast territory (especially at the federal level) and can be turned away for security reasons. The level of access

NGOs, lawyers, educators, and visitors have to prisons is entirely at the discretion of the individual warden or must be negotiated with the federal Department of Justice in the case of lawsuits and class actions. When there is active litigation, the federal system does tend to favour access for lawyers and expert witnesses.

Like Argentina, Canada has several prison-university programmes that are negotiated with individual prisons. Instructors are not allowed to make public reports on what they see or hear inside the prison, under threats of having their access revoked. Counterveillance, therefore, happens almost entirely in extra-legal ways, such as prisoner publications like *Cell Count* and the *Journal of Prisoners on Prisons* or when families and friends bring information to the attention of media and phone calls with prisoners are publicly aired. These counterveillant activities have had some success in shifting carceral practices and information sharing but tend towards a case-by-case basis instead of creating fundamental shifts in the totality of the control over information flows and access to prisons.

The 'true North strong and free' slogan cribbed from the national anthem promotes what Jefferess (2009) qualifies as a nostalgic and mythological imaginary of a nation committed to inclusion (Canada's lauded 'cultural mosaic'), peacekeeping, and transparent, accountable governance. This branding is so compelling that CSC's model of rehabilitation (see Andrews et al., 1990) is a national export, as the made-in-Canada risk-need-responsivity model has been adopted in prison systems around the world – including in Spain (CSC, 2019; Raynor, 2007). With such a compelling narrative about the promise of punishment in Canada, it is concerning how cases like Smith's and Faqiri's not only occur but are regularly repeated. While the occasional high-profile case of wrongdoing lends a moment of public scrutiny to the prison, it is rarely long-lasting as carceral governance structures are designed to obstruct it. The Canadian case illustrates the selectivity and asymmetry of transparency within what are often advanced globally as modern and civil states and signals the ongoing challenges inherent in struggles to shift ruling relations of carceral transparency.

Spain

As part of the carceral state, migrant detention facilities are arguably no less adverse to robust counterveillance than prisons in many jurisdictions, including Spain (Mecanismo Nacional de Prevención de la Tortura [MNP], 2019; Pueblos Unidos, 2021). There are two main reasons for this. Some twentieth century US cases aside (García Hernández, 2019), migrant detention facilities are relatively recent developments that emerged in countries of the global north over the last three decades (Gómez Cervantes and Menjívar, 2018). Consequently, transparency arrangements that were developed and tested in prisons have no equivalent in the migrant detention sphere. Additionally, detention centres are conceived as short-term custodial facilities, with limits placed on the duration of detention in many jurisdictions, especially in Europe (see, e.g. the European Union's 2008 Return Directive). Taken together, these features have made oversight efforts in migrant detention appear less urgent.

The Spanish system provides an interesting case of carceral transparency that resulted in wide-ranging consequences in the migration enforcement field (Barbero and Fernández-Bessa, 2013). In the late 2000s, Spanish police unions were strongly opposed to the policies of the then national Minister of the Interior, Alredo Pérez-Rubalcaba. Among other controversies, they were disappointed by the increasingly pivotal role of migration policing tasks in their everyday activities. At the time, as Spain responded to the global economic crisis, police raids targeting racialized

noncitizens for detention and deportation were progressively more widespread in large cities. In response, police unions decided to leak operational instructions from Madrid's top-ranking police officials to several national newspapers in February 2009, sparking public and political outcry. Not only did these instructions order police units to focus their efforts on certain street crime phenomena, but district police units were also tasked with achieving specific monthly arrest quotas for deportable noncitizens and encouraged to target national groups that were more easily detainable and deportable (El País, 2009a). These leaked documents laid bare the many injustices of coercive and custodial measures in this field. The Minister of the Interior's denial of these practices (El País, 2009b) is additional evidence of the significance of what was unveiled. The leaked instructions and the Minister's response not only revealed how racially biased patterns of migration policing guided the imposition of carceral measures and how some authorities worked to negate scrutiny, but also how counterveillance can be performed and provoked by carceral workers – the very actors within the carceral state responsible for regulating the flow of information.

In this case, despite institutional denial, the counterveillant generation of transparency had broad consequences. The leaked documents gave momentum to civil society groups such as Madrid's Community Brigades for Human Rights Oversight and the national coalition *CIES No!* (No to Immigration Detention!) that opposed the racial bias characterizing detention and deportation practices (Escudero et al., 2015; Fernández-Bessa, 2019). More generally, counterveillance undermined the already unstable legitimacy of the migrant detention system. In fact, following the aforementioned events, the national government openly adopted a managerial, selective approach to migrant detention, widely publicizing the criteria to impose detention measures (see Fernández-Bessa and Brandariz, 2017). These changes ultimately led to the shrinking of the migrant detention system, which continues unabated to this day.

If ruling relations of transparency were contested, and even slightly shifted, after the whistleblowing incident, it did not deeply or enduringly transform the migrant detention system's culture of transparency. Likewise, the creation of the National Mechanism for the Prevention of Torture (MNP) in late 2009 failed to significantly challenge the asymmetrical and selective transparency characterizing detention practices (Defensor del Pueblo, 2022). Despite the positive role played by the MNP in providing statistical data and piecemeal information on these inaccessible carceral sites, it has fallen short of undermining the imperviousness of these facilities to counterveillance demands. Certainly, structural shortcomings have contributed to eroding the MNP's capacities. The autonomy of the MNP is challenged by the fact that it is recurringly chaired by former political leaders whose political careers are already declining. Additionally, the MNP's logistical capacities are limited, which results in members' visits to detention facilities being few and far between. In 2022, the Spanish MNP only carried out two visits to migrant detention sites although seven such facilities are in operation (MNP, 2023). This failure of oversight fuels the culture of impunity that characterizes institutional reactions to cases of abuse and malfunction, including the long list of noncitizens who have died in these detention facilities in the past 15 years (García, 2022).

Consequently, the Spanish case of migrant detention centres, like Canadian prisons, shows the limits of *official* transparency governance and the possibilities for counterveillant actors – including whistleblowers – to reshape the terrain of transparency. Following in the footsteps of the GIP, this case study further demonstrates that exposure of authorities' efforts to limit carceral transparency can be leveraged by counterveillant actors to challenge carceral practices from below. Indeed, insurgent counterveillance mechanisms have a pivotal role to play in the field of migrant detention, where the on-site oversight activities of official bodies have patently shown their limitations.

All three case studies highlight the multifaceted and dynamic ways that carceral transparency can be generated and researched. Transparency mechanisms actively evolve and shift over time and place, depending on the institutional arrangements, actors involved, and techniques employed. The cases also reveal how carceral transparency is a product of ongoing struggle. Finally, the Canadian case shows how neoliberal frameworks of carceral transparency primarily advance and exercise the transparency rights of 'good' citizen-consumer subjects while those marked as antithetical to its promises are subjected to scrutiny and harms perpetrated under a securitized veil of secrecy.

Conclusion: Studying cultures of transparency

Our article seeks to conceptualize the role of transparency in carceral governance and unravel the paradox of how some official mechanisms established to generate carceral transparency have facilitated abuses and human rights violations. To do so, we decentre and denaturalize ruling relations of carceral transparency through an approach that encompasses geopolitically diverse carceral contexts as well as counterveillant knowledges and practices. Taken together, our reflections on the cultures of transparency of our respective carceral fields draw attention to three significant aspects of carceral transparency.

First, transparency is unevenly embraced across sites. For example, in Canada, unlike Argentina, prison administrators espouse the value of transparency. Claiming benevolence and promising rehabilitation, Canadian prison authorities attempt to monopolize the power to generate, disseminate, and authorize carceral knowledge in the name of institutional security and the social good. The result is an asymmetrical, selective, and exclusionary form of transparency consistent with a liberal veil of rights and democracy that shrouds abuse.

Second, carceral transparency is both a terrain and outcome of ongoing struggle, rather than a finished product. Carceral authorities generally have a vested interest in pre-empting, constraining, or neutralizing counterveillance efforts that threaten to upset the status quo. At the same time, unruly counterveillance actors adapt and respond to changing conditions of possibility which can produce new mechanisms and movements in the contested field of carceral transparency. While an expansion and institutionalization of external oversight may be occurring in some contexts, as the discussions of Canada and Spain exemplify, formal systems of monitoring can be fraught with impediments and complicities that permit the reoccurrence of abuse years after they have been established. In Argentina, however, relations between carceral authorities and the oversight mechanisms of state bodies appear to predominantly assume an antagonistic form, the implications of which are open to interpretation.

Finally, our accounts draw attention to the significance of counterveillance from above and below. In all three cases, counterveillance affected some degree of carceral visibility, enabling critique and contestation of harmful carceral practices. Despite this, human rights violations persist in all three jurisdictions. While a full assessment of the transformations resulting from counterveillance is yet to come, with this article we have developed a conceptual approach to carceral transparency to enable such assessment. By broadening and southernizing the comparative landscape, and by drawing attention to the complexities of mapping and transforming cultures of transparency in carceral governance, we lay the foundation required to transition from conceptualization to field research in our current study – introducing a novel conversation into the field of critical prison studies.

Our conceptualization of the role of transparency in carceral governance underscores the importance of attending to the politics of how carceral transparency is differently constituted and

negotiated. By mapping the ruling relations and the ways they operate across sites, we can understand not just organizational structures but also the web of interconnected actors, policies, practices, and regimes – in our case, carceral transparency ideology in practice – that articulate and coordinate people's everyday doings and actualities (Smith, 2005). Official transparency exists in carceral governance, yet it is woven into the very fabric of the institutional order in ways that privilege and make visible certain perspectives and practices while disappearing others that critique those practices (i.e. those of incarcerated people, their advocates, and even prison staff). In this sense, there is a 'selective transparency' in carceral governance that serves the interests of some (i.e. carceral authorities) while reshaping and recontextualizing the experience of others.

Examining institutional documents has long been the way that scholars investigate the inner workings of carceral institutions, including their cultures of transparency. While document analysis – of correctional policies and directives (Kilty, 2014, 2018), annual reports from watchdog organizations, commissions of inquiry (e.g. Arbour, 1996), or coroner's inquiries (e.g. Coroner for Ontario, 2013) – certainly has its merits, we contend that it reflects a research design bias that prioritizes investigating mechanisms of official transparency that governing authorities view as generative of what they count as information. For example, in all three countries incarcerated people have the right to submit formal written complaints and grievances. Correctional staff also maintain logs of routine activities as they occur daily in carceral institutions and record details in case notes and institutional files for each imprisoned person. Despite greater levels of documentation, and thus the increased generation of information that such carceral transparency mechanisms ostensibly produce, it remains exceptionally difficult in some jurisdictions (e.g. Canada and, to a lesser extent, Spain) to access this information or to conduct observational research *in situ*. This official configuration of transparency works to preserve existing ruling relations and thus institutional authority structures, power, and perspectival hegemony.

We propose starting from the problematic generated from what may be described as insurgent mechanisms of transparency that, through counterveillant means, produce flows of information from carceral contexts. From the perspective of carceral authorities, insurgent mechanisms are often illegible, unreliable (Kilty, 2014, 2018), or threats to security. For their part, some social scientists have neglected or backgrounded insurgent mechanisms in favour of official mechanisms that leave a convenient paper trail which may be accessed over time. We contend that it is essential to consider the material experiences, information, and means of generating information of counterveillant actors such as rights-based NGOs, university programmes and researchers, monitoring organizations, journalists, whistleblowers, and current and formerly incarcerated people as well as their family members. It is also imperative to document and analyze how authorities endeavour to forestall, contest, and neutralize counterveillance efforts. By attending to lopsided transparency struggles, it may be possible to grasp and amplify the challenges unruly counterveillant knowledges pose.

In reflecting on the meaningful differences in carceral transparency that exist across different jurisdictions, it is of note that carceral institutions in Argentina more readily allow research(er) and community access, one of many crucial lessons northern-centric scholars can learn from contexts of the global south (Carrington et al., 2019). Despite the greater degree of openness to externally produced carceral research that is witnessed in Argentina, important questions remain about how, and the extent to which, this and other modes of transparency reduce the mistreatment of incarcerated people.

As transparency mechanisms produce a confluence of different actors, communications and degrees of visibility and contestation, decentring iterations sanctioned by carceral authorities makes it possible to reveal the potentialities of counterveillance for systemic transformation. By conducting a cross-jurisdictional comparison of cultures of transparency in the global north and

south, as we have begun to do in our ongoing seven-year study, we are better positioned to decipher how carceral transparency mechanisms can crystallize into more and less harmful institutional policies and practices. As such, ruling relations of carceral transparency must be studied alongside and in relation to insurgent counterveillant knowledges and approaches to offer alternative possibilities. It is thus necessary to consider heterodox or subordinated flows of information to assess the extent to which cultures of carceral transparency can be influenced by those typically marginalized by the global trajectory of transparency governance projects.

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ORCID iD

Hollis Moore https://orcid.org/0000-0001-5655-7658

Notes

1. Please see https://www.prisontransparencyproject.com/.
2. Although accountability and transparency are often interconnected in the field of carceral governance, it is possible to have a carceral system where knowledge freely circulates, yet carceral authorities have a low degree of accountability. While 'transparency facilitates accountability,' this relationship is not unidirectional, correlational, or straightforward (Meijer, 2014: 512). Before it is possible to empirically document or theorize this relationship, it is first necessary to excavate often overlooked mechanisms of transparency. Therefore, this article charts cultures of transparency across the north/south divide to highlight various means of counterveillance that have been used, in different contexts, to challenge ruling relations of carceral transparency and make visible the harms of human caging.
3. In Canada, this paradox was clearly defined following a commission of inquiry into a series of illegal cell extractions in the now-closed Prison for Women, then the only federal women's prison in the country. In her report, the Honourable Justice Louise Arbour (1996: 181) concluded that in prisons, 'the rule of law is absent, although rules are everywhere'.
4. In Canada, Article 4.7 of the *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans – TCPS 2* states that 'individuals or groups whose circumstances make them vulnerable in the context of research should not be *inappropriately included or automatically excluded* from participation in research on the basis of their circumstances' (TCPS, 2018).

5. There are important tensions between privacy, confidentiality, and transparency, which are beyond the scope of this article. The main point here is that carceral authorities utilize this tension to selectively deny access to information, sites and people, which then subverts counterveilant transparency.
6. The movement of convict criminology (CC) maintains that to accurately capture, conceptualize, and understand the pains of imprisonment and the structure and functioning of carceral operations and power, it is essential to foreground the voices, views, and lived experiences of those who have endured criminalization and incarceration (Earle, 2016).
7. Please see https://www.instagram.com/mujerestraslasrejas/?hl=es.
8. Please see https://esquinalibertad.coop.ar/.

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