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Penal Politics and the Problematics of Child Imprisonment

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Penal politics and the problematics of child imprisonment: Outline

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1. Global human rights standards and child imprisonment
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4. Human rights standards in Latin America
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1. Global human rights standards and child imprisonment

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The United Nations Convention on the Rights of the Child


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- **Article 37(b)**: 'The arrest, detention or imprisonment of a child... shall be used only as **a measure of last resort** and for the **shortest appropriate period of time**'
- **Article 37(c)**: '**Every child** deprived of liberty shall be treated with **humanity and respect for the inherent dignity of the human person**, and in a manner which **takes account the needs of persons of his or her age**'


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Potentialities and limitations

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International Human Rights Standards and Child Imprisonment: Potentialities and Limitations

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Abstract

This article explores critically the relationship between international human rights standards and the practices of child imprisonment at a global level. Four key issues are afforded close attention: the separation of child and adult prisoners; the provision of child appropriate regimes; the protection of child prisoners' rights and the operation of independent complaint and inspection mechanisms. We argue that there is a marked tension between international human rights standards and the practical realities of child imprisonment. While we recognise the vital potentialities of the human rights standards – to partly the more problematic concerns of child imprisonment – we also recognise the threat of practical limitations and move to a more of scepticism in respect of the concept of rights-based approaches' to the penal detention of children. Ultimately, we challenge the legitimacy of child imprisonment and recommend its abolition.

Keywords
abolitionism; child prisoners; children's rights; human rights; international standards; penal detention; rehabilitation

Introduction

It is practically impossible to determine, with any degree of accuracy, the number of child prisoners worldwide. As Harvey and Lloyd have observed:

different countries have different definitions of [penal] detention, different methods of collection and collation of data and many countries have no official or systematic statistical collection. Therefore data is unreliable and difficult to compare.

[©] R. Murray, R. A. Lloyd, *Twenty Justice in Action Campaign Report* (London: Children's Legal Centre and TCCare International, 2004) 27.

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2. Global child imprisonment

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Counting child imprisonment

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- It is practically impossible to determine, with any degree of accuracy, the number of child prisoners worldwide:

'different countries have different definitions of [penal] detention, different methods of collection and collation of data and many countries have ineffectual or non-existent statistical collection. Therefore data is unreliable and difficult to compare' (Harvey and Lloyd, 2006: 27)

- At any given time at least one million children are imprisoned worldwide (Pinheiro, 2006)
- Almost certainly an under-estimate and the global trend has tended to follow an upward trajectory (Goldson, 2009)

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The Global Study on Children Deprived of Liberty

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Manfred Nowak – appointed to lead the Study (October, 2016)

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3. Penal politics – the politicisation of juvenile crime and juvenile justice

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The symbolic purchase of 'youth'

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- 'Young people... carry a peculiar burden of representation; everything they do, say, think, or feel, is scrutinised by an army of professional commentators for signs of the times' (Cohen, 1997: 9)
- 'An almost totemic status is ascribed whereby the "state of youth" is taken to signify the moral wellbeing (or otherwise) of wider social relations; a barometer signaling the composure or agitation, the equilibrium or instability of the social order' (Goldson, 2011: 2)

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The politicisation of juvenile crime and juvenile justice

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- '[Juvenile] justice is now more vulnerable to shifts of public mood and political reaction... Almost inevitably the demand is for more effective penal control... What this amounts to is a kind of retaliatory law-making, acting out the punitive urges and controlling anxieties of expressive justice. Its chief aims are to assuage popular outrage, reassure the public, and restore "credibility" of the system, all of which are political rather than penological concerns (Garland, 2001: 172-173)
- Internationally, child imprisonment rates rarely reflect juvenile crime rates

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And the consequences of politicisation?

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'Public opinion about the involvement of children in illegal activities and the search for immediate answers have led to the introduction of insane repressive methods... the *recurrent* and *banalised* use of *institutionalization* is surely problematic' (Pinheiro 2005: 17-18, emphases added)

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Some (historically embedded) problematics

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'The history of penal institutions for children is characterised by a catalogue of failure, misery, scandal, human suffering, abuse and violence, repeatedly produced and reproduced through their regimes and standard operational practices. Moreover, such history is not confined to a single jurisdiction, it is replicated worldwide and its echoes continue to be heard within many contemporary juvenile/ youth justice systems' (Goldson, 2009: 89)

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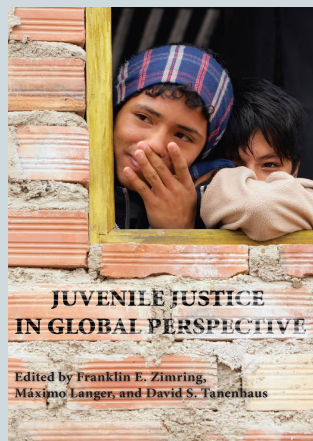
4. Juvenile justice in Latin America

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'Major understudied systems'

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(2015)

'Latin America has been an almost forgotten region in the academic English-speaking literature on comparative juvenile justice systems'

'... empirical assessment of Latin American juvenile justice systems is missing even in the Portuguese and Spanish speaking literatures'

Chapter 5 – 'Myths and Realities of Juvenile Justice in Latin America'
Mary Beloff and Maximo Langer
(page 198)

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Under-researched reforms

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'Latin American countries have undergone a wave of reforms in juvenile justice in the past twenty-five years... Despite the importance of these reforms, there has been almost no qualitative or quantitative empirical evaluations of their results' (Beloff and Langer, 2015: 231-232)

'Data sources are quite uneven on crime and justice in the region, and no systematic studies have been undertaken' (Beloff and Langer, 2015: 217)

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5. Human rights standards in Latin America

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The UNCRC in Latin America

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- **Entered into force in 1990**
Bolivia, Brazil, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay, Venezuela
- **Entered into force in 1991**
Argentina, Colombia, Cuba, Panama, Dominican Republic
- **Entered into force in 1995**
Haiti

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Have the juvenile justice reforms delivered on the human rights standards?

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- Article 37(b): 'The arrest, detention or imprisonment of a child... shall be used only as **a measure of last resort** and for the **shortest appropriate period of time**'
- Article 37(c): '**Every child** deprived of liberty shall be treated with **humanity and respect for the inherent dignity of the human person**, and in a manner which **takes account the needs of persons of his or her age**'

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6. Juvenile justice in Chile: A 'case study'

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Juvenile justice reform

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- Reform was approved by the Chilean Congress in 2005 (Law 20.084) – Juvenile Criminal Responsibility Act - and came into effect in June 2007
- ‘Our main conclusions are that... the new juvenile justice reform in Chile... has likely increased the absolute and relative levels of juvenile confinement... Our data show that after the introduction of the juvenile justice reform, juveniles are confined at higher rates than before the reform’ (Beloff and Langer, 2015: 231)

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Child imprisonment in Chile

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Number of children in penal detention and child prisoners as a proportion (%) of the total detained population 2006-2012

| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|------|-------|-------|-------|-------|-------|-------|
| Children in penal detention | 848 | 1,177 | 1,569 | 1,750 | 1,844 | 1,690 | 1,882 |
| Proportion (%) of total detained population | 2.1 | 2.6 | 3.1 | 3.2 | 3.3 | 3.1 | 3.7 |

Source: Adapted from data provided by Beloff and Langer, 2015

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The juvenile crime - child imprisonment relation in Chile?

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- To recall – ‘internationally, child imprisonment rates rarely reflect juvenile crime rates’
- ‘This upward trend of confinement levels of juveniles started in 2007, the year the juvenile justice reform came into effect, and substantially increased since then. The number of juveniles in confinement increased... 121% from 2006 (the year before the coming into effect of the juvenile justice reform) to 2012... the levels of juvenile crime or at least of the juvenile cases that reached the justice system **do not explain the increase in juvenile confinement**’ (Beloff and Langer, 2015: 235-236)

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Concluding observations

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United Nations **Convention on the Rights of the Child**
 CRC/C/CHL/CO/4-5
 30 October 2015
 Original: English

Committee on the Rights of the Child

Concluding observations on the combined fourth and fifth periodic reports of Chile

85... the Committee is concerned that...

(b) Despite legal alternatives to deprivation of liberty, these are not considered by prosecutors and judges to the extent possible, resulting in **high numbers of imprisonment convictions...** [and] **lengthy pre-trial periods [of detention]**;

(c) Detention centres are often operated as juvenile prisons... and do not have the necessary resources to provide basic health care, education and professional training;

(d) There is a lack of adequate mechanisms for children to report human rights abuses, in particular when deprived of liberty.

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7. The problematics of child imprisonment

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Global problematics of child imprisonment

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- *'Dangerous'*: juvenile corrections institutions subject confined youth to intolerable levels of violence, abuse, and other forms of maltreatment.
- *Ineffective*: Recidivism rates are uniformly high, and incarceration in juvenile facilities depresses youths' future success in education and employment.
- *Unnecessary*: a substantial percentage of youth confined in youth corrections facilities pose minimal risk to public safety.
- *Wasteful*: most states are spending vast sums of taxpayer money and devoting the bulk of their juvenile justice budgets to correctional institutions and other facility placements when non-residential programming options deliver equal or better results for a fraction of the cost.
- *Inadequate*: Despite their exorbitant daily costs... most juvenile correctional facilities... fail to provide even the minimum services appropriate for the care and rehabilitation of youth in confinement'

Mendel, R. (2011) *No Place for Kids: The Case for Reducing Juvenile Incarceration*. Baltimore: Annie E. Casey Foundation.

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Gracias eso es todo!

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