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OPTION REPORTS

RIGHTS OF JUVENILES

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The following report is one of a series produced by the Constitutional Design Group, a group of scholars dedicated to distributing data and analysis useful to those engaged in constitutional design. The primary intent of the reports is to provide current and historical information about design options in written constitutions as well as representative and illustrative text for important constitutional provisions. Most of the information in these reports comes from data from the Comparative Constitutions Project (CCP), a project sponsored by the National Science Foundation. Interested readers are encouraged to visit constitutionmaking.org for further resources for scholars and practitioners of constitutional design.

Note that the dates provided herein for constitutional texts reflect either the year of initial promulgation *or* of a subsequent amendment, depending on the version used for analysis. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

1. INTRODUCTION

Juveniles are sometimes given special rights/status in the criminal justice process. We describe below the range of constitutional provisions for the right to rights of juveniles in the criminal justice process.

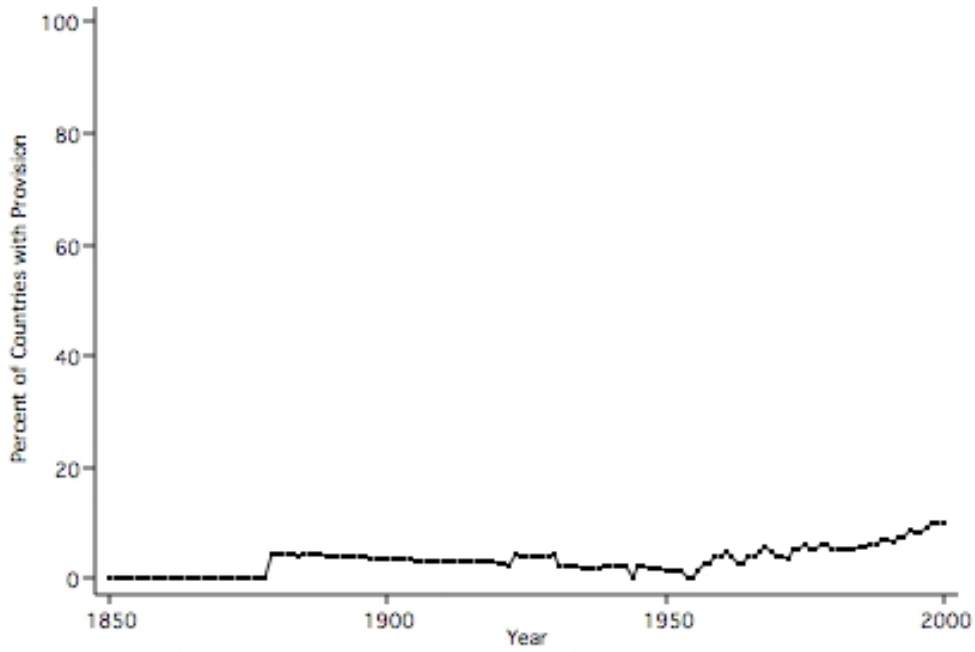
2. DATA SOURCE

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix for more information on this resource). As of this writing, the project sample includes 550 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

3. CLASSIFICATION AND HISTORICAL TRENDS

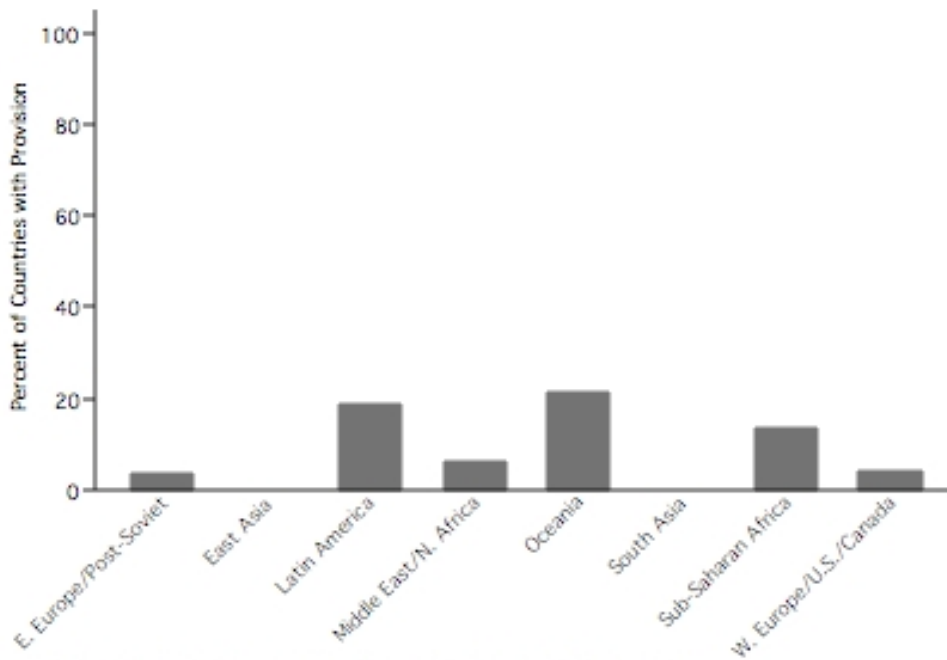
Overall, 7% of constitutions in the sample have provided juveniles special rights in the criminal justice process. As Figure 1 suggests, incorporation of this legal principle in constitutional texts has been rare throughout the 20th century. In 2000, only 10% of constitutions in force incorporated the special rights for juveniles in the criminal justice process. Figure 2 shows the regional variation among constitutions in force in 2000, showing that juvenile rights in the criminal justice process are most common in Oceania, Latin America, and Sub-Saharan Africa, and absent in East Asia and South Asia.

Figure 1. Percent of Constitutions That Provide Juveniles Special Rights in the Criminal Justice Process by Year (N=550)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

Figure 2. Percent of Constitutions That Provide Juveniles Special Rights in the Criminal Justice Process in 2000 by Region (N=191)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

4. NOTES ON ATYPICAL CASES

None.

5. SAMPLE CONSTITUTIONAL PROVISIONS

(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)

The set of sample provisions is divided into sections on:

1. Rights of Minors During Trial
2. Special Detention Places for Minors
3. Certain Punishments Cannot Be Applied to Minors

5.1. Rights of Minors During Trial

Minors of less than 18 years are subject to the legislation on minors and the administration of specialized justice in the Judicial Function. Children and adolescents have the right to respect for their constitutional guarantees.

- *Ecuador 1998, Article 51*

Art. 27.5. A detained child is, so far as practicable, to be kept apart from adults, unless that is not in the child's best interests.

Art. 29.9. If a child is called as a witness in criminal proceedings, arrangements for the taking of the child's evidence must have due regard to the child's age.

- *Fiji 1998, Article 27.5; 29.9*

Minors cannot be subject to or [be] the object of judgment, nor can they be submitted to any legal proceeding. Transgressor minors cannot be taken to penal rehabilitation centers and they shall be attended to in centers under the responsibility of a specialized institution. A law shall regulate this matter.

- *Nicaragua 2005, Article 35*

The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsections (1) and (3) of this section

(including the announcement of decisions of the court or tribunal) shall be held in public

Provided that-

(a) a court or such a tribunal may exclude from its proceedings persons other than parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of 18 years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

- *Nigeria 1989, Article 35.12.a*

No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases, that is to say

...

(g) in the case of a person who has not attained the age of eighteen years, under the order of a court or with the consent of his parent or guardian, for the purpose of his education or welfare;

- *Solomon Islands 1978, Article 5.1.g*

Every child who is in detention shall, in addition to the rights which he or she has in terms of section 25 have the right to be detained under conditions and to be treated in a manner that takes account of his or her age.

- *South Africa 1993, Article 30.2*

Special provisions are provided in the law with respect to the trial of minors.

- *Turkey 2002, Article 141*

The law shall provide that juvenile delinquency shall be dealt with under a special system in which women will be allowed to participate.

- *Uruguay 1996, Article 43*

Court hearings shall be public.

The law shall designate those cases in which the public may be barred from court hearings in order to safeguard secrets, or to protect public decency, or in the interest of minors, or to safeguard other particular interests of the social community.

- *Yugoslavia 1963, Article 141*

5.2. Special Detention Places for Minors

No child may be detained except as a measure of last resort, in which case the detention shall be as short as possible.

Every child is entitled to be separated from detainees older than sixteen (16) years of age and to treatment and detention conditions which correspond to his age.

- *Burundi 2004, Article 46*

A juvenile offender who is kept in lawful custody shall be kept separately from adult offenders.

- *Gambia 1996, Article 29.3*

Minors who violate the law are not indictable. Their treatment must be directed toward an integral education proper to childhood and adolescence.

Minors whose conduct may violate criminal law will be placed in the care of specialized institutions and personnel. For no reason can they be incarcerated in penitentiaries or detention centers intended for adults. A specific law will regulate this manner.

- *Guatemala 1993, Article 20*

The federal and state governments shall establish special institutions for the treatment of juvenile delinquents.

- *Mexico 2003, Article 18*

Minors cannot be subject to or [be] the object of judgment, nor can they be submitted to any legal proceeding. Transgressor minors cannot be taken to penal rehabilitation centers and they shall be attended to in centers under the responsibility of a specialized institution. A law shall regulate this matter.

- *Nicaragua 2005, Article 35*

Art. 34.8. Juveniles accused or convicted of offences shall *be* kept in remand homes or reformatory centres and their treatment including rehabilitation shall be the underlying principle for their custody.

Art. 35.12. The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsections (1) and (3) of this section (including the announcement of decisions of the court or tribunal) shall be held in public

Provided that-

(a) a court or such a tribunal may exclude from its proceedings persons other than parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of 18 years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

- *Nigeria 1989, Article 34.8; 35.12.a*

An offender or a suspect who is a minor and who is kept in lawful custody or detention shall be kept separately from any adult offender or suspect.

- *Seychelles 1996, Article 18.12*

Every child has the right—

...

(g) not to be detained except as a measure of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has the right to be—

(i) kept separately from detained persons over the age of 18 years; and
(ii) treated in a manner, and kept in conditions, that take account of the child's age;

- *South Africa 2003, Article 28.1.g*

Juveniles accused of offences shall be kept separate from adults and shall be brought for trial as soon as possible.

- *Sudan 1973, Article 77*

5.3. Certain Punishments Cannot Be Applied to Minors

Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right—

(g) in addition, if that person is a child, to treatment consistent with the special needs of children, which shall include the right—

(i) not to be sentenced to life imprisonment without possibility of release;

- (ii) to be imprisoned only as a last resort and for the shortest period of time;
- (iii) to be separated from adults when imprisoned, unless it is considered to be in his or her best interest not to do so, and to maintain contact with his or her family through correspondence and visits;
- (iv) to be treated in a manner consistent with the promotion of his or her sense of dignity and worth, which reinforces respect for the rights and freedoms of others;
- (v) to be treated in a manner which takes into account his or her age and the desirability of promoting his or her reintegration into society to assume a constructive role; and
- (vi) to be dealt with in a form of legal proceedings that reflects the vulnerability of children while fully respecting human rights and legal safeguards.

- *Malawi 1999, Article 42.2.g*

No sentence of imprisonment at hard labor shall be imposed on any person who has not attained the age of 18 years.

- *Marshall Islands 1990, Article 6.2*

The detention of persons underage (minors) may not exceed 60 days.

- *Montenegro 2006, Article 23*

The death penalty shall not be imposed on a person under the age of eighteen or a person who has attained the age of seventy except in cases of retribution or *hudud*.

- *Sudan 2005, Article 36.2*

6. APPENDIX

This report is based on the following question(s) from the Comparative Constitution Project's "survey instrument":

[JUVENILE] – Does the constitution give juveniles special rights/status in the criminal justice process?

1. Yes
2. No
96. other, please specify in the comments section
97. Unable to Determine

Instructions: Please code yes and make a comment if minors are detained separately from adults or if certain punishments cannot be applied to minors.

For additional documentation on the Comparative Constitutions Project, (including the full codebook, the sample, the sources of constitutional texts and translation issues related to those texts, coding procedures, publicly available data, etc.) please visit the project website at www.comparativeconstitutionsproject.org.