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Elite punitive populism and youth justice reform in Chile: Legitimizing a new political order

Populizm penalny elit a reforma wymiaru sprawiedliwości dla nieletnich w Chile: legitymizacja nowego porządku politycznego

Abstract: Chilean youth justice went through a drastic reform process during the 2000s, it was the second radical youth justice reform movement in the country since the creation of the Law of Minors in 1928. The decision to reform took place as Chile transitioned and stabilized into democracy after the authoritarian regime of the 1970s and 1980s. Superficially, it seems this is just one more way of embracing democracy and Human Rights. However, after in depth documental analysis of both the reform and the socio-political context, this paper offers a different insight and an explanation for the sudden relevance of youth justice, as a tool used by authoritarian political elites that then filtered into the political elite of the new democracy. In this context, populism played a key role in spreading concerns about youth offending and the need for a new youth justice which worked to strengthen the legitimacy of authoritarian practices in the new Chilean democratic order. It was an elite-driven populism that transformed youth justice into a key social and political concern.

Keywords: Chilean Youth Justice, punitive populism, authoritarianism, democratization, Latin America

Abstrakt: W 2000 roku chilijski wymiar sprawiedliwości dla nieletnich został poddany drastycznemu procesowi reform. Od czasu powstania prawa o dzieciach w 1928 roku był to drugi radykalny ruch na rzecz reformy wymiaru sprawiedliwości dla nieletnich w tym kraju. Decyzję o reformie podjęto, gdy po reżimie autorytarnym lat 70. i 80. XX wieku, Chile zmieniło ustrój polityczny i stabilizowało się jako republika demokratyczna. Pozornie wydawać by się mogło, że reforma była tylko kolejnym sposobem na wprowadzenie ustroju demokratycznego i praw człowieka. Niniejszy artykuł, w oparciu o pogłębioną analizę dokumentacyjną reformy, jak i kontekst społeczno-polityczny, w którym ona

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zaszła, wyjaśnia nagle zainteresowanie autorytarnych elit politycznych wymiarem sprawiedliwości dla nieletnich jako narzędziem, które pozwoliło im przeniknąć do elit politycznych nowej demokracji. W tym kontekście populizm odegrał kluczową rolę w szerzeniu obaw dotyczących przestępczości nieletnich oraz w rozbudzeniu potrzeby budowy nowego wymiaru sprawiedliwości dla nieletnich. Proces ten miał jednak na celu wzmocnienie legitymacji autorytarnych praktyk w nowym chilijskim porządku demokratycznym. To populizm napędzany przez elity przekształcił wymiar sprawiedliwości dla nieletnich w kluczowy problem społeczny i polityczny.

Słowa kluczowe: chilijski wymiar sprawiedliwości dla nieletnich, populizm penalny, autorytaryzm, demokratyzacja, Ameryka Łacińska

Introduction

Chilean youth justice operated under the same principles, institutions, and procedure from its creation in 1928 until 2005, when it was radically reformed. The country went from a tutelary system with high levels of discretion, no separation between protection and offending cases, and indefinite institutionalization measures, to a responsibility system. This change attempted to guarantee due process to young people suspected of having presented offending behaviour as described in the national penal code. It created institutions in charge of ensuring the protection of rights and legal defence of juveniles, and it challenged discretion by pre-defining a range of possible penalties and their minimum and maximum possible extents. It also separated all cases of children's rights protection, which became the responsibility of the Family Court.

Discussions of such a big reform started in the early 1990s, after the ratification of the UN Convention on the Rights of the Child [UNCRC]. The document assumed an important role in all Latin American constitutions, and led to youth justice reforms throughout the 1990s and 2000s, starting with Brazil in 1990. There was a broad agreement on the need to modify the old tutelary systems that had dominated the region and move towards responsibility systems, which were widely supported by UNICEF (Beloff 2006). However, the implementation of the UNCRC and statutes in line with it have failed to be properly implemented (Morlachetti 2010). Instead, responses to youth offending mixed new approaches towards children's rights with previous repressive measures and the widespread fear of youth violence, remaining predominantly focused on vulnerable sectors of the population. In consequence, what prevailed was the continuation of authoritarian policing and the spread of zero tolerance approaches (Ungar 2009), which led to imprisonment rates increasing in most countries (Carranza 2013; Hathazy 2015; Fonseca 2018).

Chile ratified the UN convention in 1991. The document, as the country exited a violent dictatorship, was a good way of stating the allegiance of the new government to Human Rights. This was a time in which Human Rights were at

the centre of what democracy meant (Cillero 1998; Peruzzotti 2017), and was an important line of argument by experts and some politicians regarding the need to adjust Chilean youth justice (Congreso Nacional 2005; Cillero 2006; De Ferrari 2006; Reyes-Quilodrán, LaBrenz, Donoso-Morales 2018). In consequence, the first pre-projects of the LRPA in the mid-1990s were written by some of the few youth justice experts in the country, in coordination with UNICEF. As such, those drafts had a strong focus on the UNCRC (García-Méndez, Beloff 1998). Following this line, once the law draft started its legislation in 2002, there was a relatively strong presence of mentions of the UN Convention and concerns over the need to improve youth justice and guarantee due process, as Ricardo Lagos stated in the campaign for presidency that won him the position for the following six years: “We protect the rights of children and youth by adapting our legislation to the UN Convention on the Rights of the Child” (1999: 13).

Nevertheless, as the decade progressed the presence of discourses around crime, security and youth offending increased dramatically. It went from a small mention by President Frei in the mid-1990s to one of Chileans’ greatest concerns and an important element of elections and government programmes by 1999. Likewise, as discussions about the new youth justice moved forward in the legislative stages, it was progressively stripped of measures in line with the UNCRC. Instead, new rules were included which increased the length of imprisonment, added a minimum term to such measures, and reduced and limited diversion measures.

Therefore, it seems that despite the discursive strength of human and children’s rights, the support for reform by international organizations such as UNICEF, and even though there was indeed a radical change of the institutions, principles, procedure and staff dealing with young people who displayed offending behaviour, the change was from one punitive system to another. Furthermore, Chilean developments in terms of crime control and justice do seem to mirror aspects of the “punitive turn” in youth justice described in the global north, and under a similar time frame, despite the relevant historical, cultural, geographical, and socioeconomic differences between regions and countries (see for example Bottoms 1995; Muncie 2005; Goldson, Hughes 2010; Chaney 2015). Youth justice in those countries, as in other Latin American examples (Bonner 2018), has been described as following a populist punitive trend. Populist punitiveness (Bottoms 1995) refers to the promotion by political leaders of public opinion that favours harsher approaches in crime control and justice as a mean to gain electoral support. This is usually done through rhetoric that divides society in two groups, “us”, as the citizens, and “them”, as the alien criminal, appealing to citizens’ fears and insecurities (Bonner 2018).

This article attempts to address the interaction between populism and the reform of the Chilean youth justice system. In doing so, it offers an explanation as to how youth offending, which had not been part of citizens or politicians’ areas of interests, came at the centre of national concerns over the 1990s and early 2000s. At the same time, it refers as to how this dynamic displaced children’s rights dis-

courses while privileging punitive and authoritarian approaches. As we will see, the role politicians gave to youth justice in their race towards power and in their quest towards legitimizing their position as the new elite was key. Therefore, the Chilean case provides an interesting example of elite punitive populism.

1. Methodology

To understand the salience of youth justice in the political context of the 1990s and early 2000s, the surging reform efforts, and the role of populism in this process, this research relied on document analysis. The documents considered included transcriptions of the annual presidential speeches of public accountability, which take place in May every year. The speeches cover the period from 1994, the first year of President Frei's government, as it was during his rule that political talk about a new youth justice started; until 2007, the year the reform was officially implemented. This included three presidential terms: Frei [1994–2000], Lagos [2000–2006] and Bachelet [2006–2010]. All three belonged to the same centre-left coalition, the Concertación. The government projects of presidential candidates in the 1999 and 2005 presidential elections were also considered. Other key documents analysed include the transcription of legislative discussion in the Chilean Congress in both the Deputies and Senators' Chambers, which can be found in the "history of the law 20,081" and the "history of the law 20,191", these documents are produced by the National Congress for every law. All the documents are of a public nature and can be found in the official website of the Chilean National Congress, and via repositories that keep records of presidential public speeches and the public government programmes of presidents and presidential candidates.

The decision to analyse these documents was taken with the understanding that they provide insight into the discourses and approaches framing political decisions and policy making (which views are being privileged and which ones discarded), while also reflecting the wider context of their time (Garland 1985; Chaney 2015). The analysis of these documents was made through adaptive theory (Layder 1998; Bottoms 2008). This means the texts were coded in a back-and-forth process of discussion with the literature in the field, understanding that the selection of the research topic already involves some background knowledge. Therefore, the first coding stage is informed, and then contrasted with the literature, to then continue to another stage of coding, increasing abstraction of concepts and reviewing new elements that become relevant from the data. This was done using NVIVO 11 to facilitate the connection of topics, and the discussion between theory and data. The documents were also analysed under a sociological history approach (Skocpol 1984; Garland 1985; Ariño 1995) as the purpose was to understand a long-standing process of social and political change. Therefore, the results will in-

clude quotes from the different documents to illustrate and summarise the official narrative of the political discussion at the time. It is also worth commenting that the documents are originally published in Spanish, the translation of the quotes was carried out the author of this paper and was proofread by an English native who also speaks Spanish.

2. Populism, crime control and security

Most of the literature on populist punitiveness and concepts that refer to the interaction between politics and the spread of punitive crime control approaches (such as penal populism, see Pratt 2007) comes from the United States and the United Kingdom. The term has been used when citizens' fears, anxieties and misinformation regarding crime control and justice issues are used to gain electoral support. In this context, punishment is also instrumentalized to divert the attention of voters towards personal security and away from other troubling areas (Roberts et al. 2002). This has resulted in the implementation of harsher laws, longer sentences, mandatory minimum sentences, and the increase of control and exclusion of marginalized population (Müller 2012).

Thus, punitive penal policies are not necessarily a reaction to increasing crime rates or the predominance of a punitive approach in citizens, but the result of political strategy, without serious considerations of their consequences and impact (Roberts et al. 2002). As such, crime control populism takes a more central role at times of elections, in which different actors claim to speak on behalf of wider populations whose fears are being ignored or neglected by the ruling elite (Dobrynina 2017).

This has resulted in policies that might gather great levels of electoral support, but could also be counterproductive, useless, or even totally unrepresentative of what the public want and request. Moreover, penal policy is more at risk of populist approaches, as it is a topic that generates fear and concern in the general population, where there is little knowledge as to how crime control or the justice system works, and the underlying aspects of offending (Roberts et al. 2002).

This trend of appealing to fear of crime during political campaigns has been described as stronger in countries with sharp inequality levels, low government willingness or ability to provide social services, and where major offices are contested for elections. As the state is limited to satisfy citizens in other areas, it becomes tempting to resort to directing their fear towards an internal enemy. In doing so, "anti-politics" politicians, usually posing as "strong man" leaders present themselves as a better option compared to the other institutions, politicians and experts, who are presented as too weak to deal with crime (Chevigny 2003).

In late modern times, some authors highlight a convergence in this punitive trend in western countries (Wacquant 1999; Muncie 2005; Brandariz-García 2018), which in youth justice has translated into the predominance of individual responsibility (Goldson 2013), and in further marginalization of already vulnerable young people (McAra, McVie 2005). Nevertheless, authors such as Dario Melossi (2004, 2011) highlight the need to keep in mind the differences between jurisdictions, which lead to divergent results, and thus it is worth to analyse different realities, such as Latin America, and in this article, Chile.

When it comes to punitive populism in Latin America, several authors have highlighted its increasing presence (Dammert, Malone 2006; Pinheiro 2007; Becket, Godoy 2008; Iturralde 2010; Müller 2012; Hathazy 2015; Sozzo 2016). This has led to policies that strengthen the police, expand the attributions of crime control institutions and the justice system, and increase the number of actions considered a legal offense and the penalties associated to such behaviours. It also involves a tendency to privilege imprisonment over other options (Bonner 2018). However, most of this literature has covered imprisonment and adult penal policy, instead of youth justice developments.

3. Context: The right-wing and the crime and security narrative

The 1990s were times of great changes in Chile. After 17 years of a violent extreme-right military dictatorship with strong censorship laws, economic crises, human rights violations, and a national turn towards neoliberalism; the transition to a centre-left electoral democracy offered a completely different scenario. Citizens now had to live in a suddenly modernized and globalized society following radical political, social, and economic changes, with a lack of employment and financial stability (Constable, Valenzuela 1993; Lawson 2005). Chileans were living under high levels of financial, health and stability struggles. In this context, crime control and youth offending were not among citizens' main concerns, as they had more pressing worries, and the only security matters talked about in the authoritarian regime had to do with "national security" and "enemy" leftist ideas (Constable and Valenzuela 1993; Oppenheim 1993; Valdivia 2001).

Another key contextual element to keep in mind is that the Chilean authoritarian regime ended through a referendum, which led to presidential elections that resulted in 20 years of rule by the same centre-left coalition, the Concertación. Because of this method of transitioning from authoritarianism to electoral democracy, the authoritarian right-wing was not discredited. Quite the contrary, in the early 1990s they still had about 40% of support from citizens who wanted the authoritarian regime to continue (Oppenheim 1993).

Moreover, the newly elected authorities had to adapt to and work under a series of institutions and rules left by the dictatorship, such as the neutralization of previous civic culture and participation, leaving the country with few NGOs or social institutions that could unite or inform citizens beyond the government and the media, while those few organizations that still existed were more dedicated to fighting the poverty levels of the regime (Weyland 1999; Dammert 2005; Borzutsky 2017). These conditions had been also secured through the “authoritarian enclaves”, the agreements imposed by the military regime to transition towards a new democratic order. These involved, for example, the continuation of the national constitution of 1980, which was written by the authoritarian government and ratified in a corrupt referendum (Garreton 1982; Constable, Valenzuela 1993; Hilbink 2007).

Similarly, the enclaves guaranteed the permanence of authoritarian right-wing figures in political life. This was accomplished through implementing a new electoral system which favoured the formation of two majoritarian groups (the centre-left in the government and the opposing right-wing). This system guaranteed that the losses of the Concertación were the gains of the right-wing. Another strategy to keep key figures in power was by appointing Senators, most of whom were ex-members of the Armed Forces. As a result, after the first parliamentary democratic elections, the right-wing dominated the Senators’ chamber, even though the centre-left governing coalition gained the most elected seats. Similarly, the military government had appointed all Mayors before the transition, and they remained in place until the 1992 Mayoral elections (Constable, Valenzuela 1993; Oppenheim 1993; Lawson 2005; Álvarez 2014; Borzutsky 2017; Kennedy 2017).

As a consequence, the authoritarian right-wing have retained their economic, social, and political privileges to this day (though there is a constitutional reform being discussed at the moment) and remained as a strong opposition. However, there were a series of topics that weakened the political presence of the right-wing. For example, mentions of Human Rights, criticisms of their neoliberal model or the faulty functioning of the institutions they left were out of discussion. The right-wing and the military openly resisted and criticized all efforts to clarify their actions and violence during the dictatorship, claiming their actions were needed to protect the country (Oppenheim 1993; Lawson 2005; Hilbink 2007). In consequence, even though there were two reports regarding Human Rights’ violations, these did not provide information on the perpetrators, did not manage to clarify the amount and identity of all people murdered, tortured and/or disappeared, and brought legal consequences for few of the perpetrators, leaving most in impunity (Borzutsky 2017).

Nevertheless, despite the unity of the authoritarian elite on this matter, after losing in the 1988 referendum and the following presidential elections of 1989, the right-wing was fragmented and facing internal conflicts (Oppenheim 1993; Álvarez 2014). Therefore, they needed to find a new topic for political competition in which they could thrive.

In 1991, Jaime Guzmán, a pro-dictatorship civilian who was key in strengthening and giving powerful legal tools to authoritarianism, such as the 1980 national constitution, was murdered. That same year, the son of the owner of *El Mercurio*, a right-wing newspaper who played a key role supporting the dictatorship and supports right-wing ideology up to this day, was kidnapped. According to Alejandro Tsukame (2016), these events made the right-wing feel insecure in ways they had not since before Pinochet's regime, while other authors highlight that these events opened the topic of security for political use by the right-wing across the 1990s (López 2000; Candina 2005).

In the Mayoral election of 1992, the right-wing took the issue of security as part of their proposals becoming successful in opinion polls and elections thanks to this. For example, Mayor Lavín in Las Condes, one of the richest and most strongly right-wing municipalities of the country, put extra protection measures through as subsidies for erecting fences and having municipal guards watching the streets. The strategy proved effective, allowing the right-wing to gain a stronger political presence and recover their political position by the following Mayoral election in 1996 (Álvarez 2014).

4. Results: Populism and youth justice in Chile

President Frei's government started in 1994. He was the second President from the Concertación, and the first one to mention youth offending as different from adult offending in an official political discourse.¹ Under his lead a series of crime control measures were developed, and some offences increased their penalties, such as receiving stolen property through the Law 19,413 of 1995, or rape through the Law 19,617 of 1999. Other measures taken by President Frei involved a programme to strengthen the police in 1995; a project to build more prisons in 1997 and the creation of a national plan to divide the areas guarded by the police so they could become closer to the community. Under this government the Chilean penal system was also radically reformed, together with measures to increase resources and staff in both the armed and civil police (López 2000; Dammert, Lunecke 2002; Candina 2005; Morales 2012).

He was the President that inaugurated the approach of the governing coalition towards the crime control rhetoric presented by the right-wing, and added the need to protect citizens from crime to Concertación's political speeches (De Ferrari 2006), as this quote from 1995 evidences: "Crime, terrorism and drug trafficking

¹ "[...] to study a reform of the Law of Minors in order to update it both in family and penal matters to the constitutional principles and international treaties ratified by Chile" (President Frei 1994: 16).

are a threat for national coexistence that the government has fought; and will keep fighting with firmness, energy and responsibility” (Frei 1995: 27).

These reforms were widely supported by the right-wing opposition (López 2000; Duce 2004; Morales 2012). Therefore, despite most crime control actions over the 1990s still being focused predominantly on adult justice, it was an area that did not offer enough political advantages at the time, and thus the reforming zeal and narratives permeated down to youth justice, where they took on greater political, populist and punitive strength, as we will see below.

4.1. A crime control race

In the 1990s, the predominating discourse around crime control and justice became about the need of an “iron fist” towards crime and to stop the “revolving door” of the justice system (Tsukame 2016). Though the discussion still oscillated between the need to make it harsher, changing perceptions of impunity (Couso 2009), such as President Lagos’s comments in his 2000 public speech: “We will achieve more efficient punishment against offenders, including a life sentence that is in fact a life sentence” (Lagos 2000: 16); and the need to make reforms that helped rehabilitation processes and stopped prisons from being *crime schools* (Frei 1999: 54).

However, punitive approaches won a priority role over other concerns in 1999’s presidential elections and through the early 2000s. In the presidential elections of 1999, crime control, security and youth offending took centre stage. The right-wing presidential candidate Lavín, previously mentioned in his role as Mayor, put a special emphasis on the failures of the justice system: “people lose trust because they know that for every 100 criminal cases of robbery and rape, only four reach a sentence” (Lavín 1999: 30). He also mentioned the need to strengthen crime control, to end “the offenders’ party”, and to “send clear signs against crime” (Lavín 1999: 4). In this process, he portrayed himself as an ally who could offer the solutions the general population needed: “Chile needs a change! It needs a fast and efficient justice that works for all. We need to perfect the system to make it more modern and increase its hedge, reaching all people” (Lavín 1999: 30). The strategy was successful, making Lavín the strongest right-wing candidate since the turn to electoral democracy in 1989. He was only defeated after the second round by the third Concertación President, Ricardo Lagos, with a difference of less than three per cent. Lagos, the Concertación candidate who eventually won, also put crime at the centre of his candidacy. For example, he stated in his government programme that his regime would “[...] fully assume the legitimate distress of families regarding the size and seriousness of the crime phenomenon and to have among its priority tasks the protection of the security to live and the goods of people through the integral fight against crime” (Lagos 1999: 19). Once elected, he promised to build more prisons and to increase the use of incarceration (Lagos 2000; Dammert, Díaz 2006; Morales 2012).

Following from Lavín's strategy, Lagos also presented himself as a citizens' ally by criticizing the elite in their privileged situation, despite the fact he belonged to this elite:

We Chileans know that when the state is weak, the strongest rule. Only those who have the means to defend themselves and buy their health, buy the education of their children, housing, insurance and even security for their family will remain standing. The rest will remain condemned to save themselves as they can with their scarce resources. (Lagos 1999: 2)

By President Lagos' rule, security had been fully redefined from state security to security from crime. This is visible, for example, in Lagos' 2001 national speech: "The expansion of personal freedom must go hand in hand with greater security for the family and community. That is why we have transformed the fight against crime into a national priority and everyone's responsibility" (Lagos 2001: 4).

Similarly, human rights protection was reduced to the protection of citizens' rights as consumers:

[...] the creation of the Citizen's Defendant, who should veil for the rights of the users of public services and will have the power to canalize complaints and investigate cases of bad service (Lagos 2000: 8)

and from crime:

A democracy is based in the effective protection of the rights of all citizens. That is why the Concertación's governments have promoted a wide legal reform, starting with the reform of the penal procedure [...]. Today, poor and humble people can also aspire to transparent oral trials and in fair time. (Lagos 2002: 9)

This scenario was repeated in the subsequent Presidential elections of 2005. This time, the main candidates were Sebastián Piñera, initially representing the right-wing party National Renovation, Joaquín Lavín, who had already run for President in 1999 under the right-wing National Democratic Union, and Michelle Bachelet as the Concertación candidate. These candidates engaged in open confrontations over who had the most punitive approach towards crime and security. For example, Piñera explicitly supported "zero tolerance" and "three strikes" policies in his government programme (Piñera 2005). He also highlighted the need to strengthen the police, which was also proposed in Bachelet's programme, who offered to expand prisons as well (Bachelet 2005).

Following from this, Piñera and Bachelet became the strongest candidates in the first round and continued to the second. The right-wing joined into the coalition Chile's Alliance to support Piñera in the final race, however Bachelet still won the elections. As promised, President Bachelet (2006–2010) built even more prisons and made crime and security even more central to all social and political matters: "We will actively work to protect citizens and attack the deep causes of

violence and crime. Citizens' security is essential in the social protection system we are going to build" (Bachelet 2005: 64). Moreover, in her government, the project for a short-term policy against crime [*Agenda corta anti-delinuencia*] was submitted to the Congress and approved, which gave more powers to the police and increased the severity of the justice system (Morales 2012). The policy was the result of populist crime control, and damaged potential reforms to improve the situation of the prison population (Ross, Barraza Uribe 2020).

Across this period, youth offending and security were not only being used as a strategy to win votes, but also because it allowed the opposition to highlight the 'failures' of the government. For example, Deputy Cardemil openly criticized President Lagos' rule in the legislative discussion of law 20,191, which modified the LRPA before its implementation, in 2007:

The issue is that the Concertación is considering each time more legitimate the use and abuse of all the resources of the State, as if they were property of the ruling coalition, with the purpose of perpetuating their power. This started taking shape in the government of Ricardo Lagos and involves communicational abuse [...]. Nothing was fulfilled. That's why the government of Mr. Ricardo Lagos has ended being like a Hollywood's decoration, where the only real thing is the façade of the places, but there's nothing behind. (Congreso Nacional 2007: 71)

4.2. Public opinion and crime

As time progressed and crime control and security became more visible, public opinion, or at least what surveys and the media portrayed as public opinion, and thus what politicians understood it to be, started being directly referenced as a demand, a permanent concern which conveyed a sense of urgency to be satisfied. The general notion was of a public that required answers from politicians regarding youth offending and punishment as shown by the words of Deputy Hales in the legislative debate: "The people ask for punishment for offenders; this project propose penalties for adolescents who commit offences" (Congreso Nacional 2005: 1038).

Moreover, by the end of the 1990s security was positioned amongst the top concerns of citizens, offending was in the top three, and fear of crime was more important than economic stability and job insecurity in opinion polls, offering support to politicians' claims (López 2000; Dammert, Lunecke 2002; Duce 2004; Dammert 2005).

Therefore, over the course of a decade, youth justice went from no one's concern to "A problem that, lately, has revealed in an extremely harsh way and which seriously concerns our society" (Senator Novoa in Congreso Nacional 2005: 507). There were, of course, some voices that complained against the populist use of this topic, such as Deputy Burgos who claimed: "The closer the elections are; there is a real fight to present and accept initiatives related to citizens' security" (Congreso

Nacional 2005: 348). Yet, this was not enough to stop the tide, and the populist politicization of youth justice gained increasing presence.

In this context, the media played a key role. This, because the media acts as one of the main sources of information about crime for citizens (Roberts et al. 2002; Fortete, Cesano 2009), but also for politicians over the legislative debate. This is visible, for example, in the arguments of the parliamentary discussion regarding the need of a new youth justice: “Yesterday we could see on a TV show the case of a minor of under 14 years of age who has been detained 23 times for different offences, and he is still free” (Deputy Uriarte in Congreso Nacional 2005: 1098).

This was amplified by the lack of expertise in Latin America regarding the topic (Beloff, Langer 2015). For example, Ana María Morales (2012) highlights the scarcity of sources when it comes to crime data. This last point is particularly relevant, as in Chile there is a lack of access to reliable sources of information, with most statistics maintained only by a couple of institutions, which recorded information differently. Additionally, prior to the 1990s, records were poorly kept, rarely analysed, and the government was marked by a lack of transparency and manipulation of records (Lawson 2005). Similarly, there were no studies regarding what citizens really knew or what they felt towards youth offending and crime control, though research in other contexts suggests that when asked directly and offering some context, the general population is not really punitive (Indermauer, Hough 2002; Hough, Roberts 2012).

This left plenty of space to legitimize politicians’ personal views or make opportunistic use of poor understanding of international realities due to the lack of knowledge. This was problematic as it collided directly with research, evidence and expertise build in other contexts but also by the few Chilean experts on the field (Congreso Nacional 2005), yet those personal opinions took a more predominant role. A good example of this is the argument raised by the Surrogate Minister of Justice Arellano in the legislative discussion of the new youth justice: “It is much better to invest public policy money in adolescents’ penal responsibility than in any other mechanism to fight crime” (Congreso Nacional 2005: 1041), which resulted in a focus over responsibility instead of prevention, restorative, or rehabilitative measures.

Furthermore, the media is considered to represent the opinion of the wider population and positions itself as their voice (Dobrynina 2016), despite who they rely on to support their stories – usually politicians or state institutions – how these stories are framed, and how they also shape public opinion (Bonner 2018). Therefore, the interaction between politicians and public opinion is dynamic, as politicians, even as they attempt to follow public opinion, may be guiding it (Roberts et al. 2002).

The role of media becomes even more problematic when taking into consideration that in Latin America it is very common for the media to act as an extension of the conservative right-wing, with control concentrated in a few hands (Santander 2010). For example, in the Chilean case, one of the most important newspapers is

the right-wing *El Mercurio* (Bonner 2018). Therefore, it is not surprising the authoritarian right-wing voices that started talking about security and crime control had a privileged space to spread their views and set the trend of how to approach the topic. They used this rhetoric as support for their decisions, despite the lack of other sources in line with their views, and also to validate their authoritarian ways, promoting more control and less freedom, especially as most, though not all, politicians who actively promoted these punitive measures as representative of the objectively unknown view of the population, were members of the right-wing, the Independent Democratic Union, or National Renovation (Congreso Nacional 2005; 2007).

The effect of their narrative was strengthened by the echoing opinion coming from *Paz Ciudadana*, a foundation created by the owner of *El Mercurio* to support security policies, which came to have a strong influence both in the government and in the youth justice reform, as the words of President Lagos evidence: “Some private entities, such as Paz Ciudadana have made great contributions” (2000: 11), being the only institution mentioned in this regards in his speech.

Moreover, as international research has shown, when it comes to crime, the media tends to promote fear and insecurity, together with a distorted image of young people. It also has a key role when talking about populism and crime (Hall 1978; Garland 2001; Nash 2006; Jewkes 2011; Hough, Roberts 2012). Chile also followed this trend and adolescents started being portrayed as the “greatest danger against people’s security” (Deputy Saa 2004: 253). Thus, it was unsurprising that this notion of young people and the need for more punitive measures to deal with youth offending permeated public opinion. Even if such a punitive approach had not spread into the audience, who at least in Chile do not have the opportunity to directly communicate their interests and concerns to the political elite (Rodríguez Gutiérrez 2020), the media still functions as the representative voice of citizens for politicians, and public opinion becomes what the media portrays it to be (Green 2009).

In consequence, the public seems to become another strategic tool for the political elite to validate and legitimize their role and position. Therefore, politicians in Chile seem to have used security concerns and youth justice reform to keep citizen attention focused on a topic that accommodated them better, and which provided a tool to attack the opposition. At the same time, politicians used this sentiment to present themselves as representing the views of the wider population: “In this project there is a future public policy, in the sense that, as a society, we are going to explicitly express we are not going to play dumb with what is going on with young offenders or law-breakers” (Deputy Burgos in Congreso Nacional 2005: 1034), which allowed them to pose as both needed and useful.

As a result, a populist approach predominated in the discussion over a new youth justice, which in turn promoted harsh measures that made politicians seem concerned and active, instead of being effective. This approach has been identified in other societies that have turned to populist approaches in crime control (Sparks

2003; Dammert, Malone 2006; Müller 2012; Sozzo 2016). For example, Barry Goldson (2002) has already mentioned how political priorities have more weight over new policies than expertise. Therefore, the new youth justice system, which was intended to guarantee and protect children's rights and bring responsibility, education and rehabilitation, became more about surveillance, reduced diversion, reinforced imprisonment, and in general concerned with punishment.

4.3. Populist punitiveness and the Chilean youth justice reform

Politicians added crime control and security as a central feature to their speeches and proposals at times of elections. They claimed those were aspects that seriously troubled citizens and were supported by the media and opinion polls. This directly impacted the reform, as youth justice went from a punitive tutelary system, through drafts of a new youth justice under the guidelines of the UN Convention on the Rights of the Child [UNCRC] and UNICEF, finally becoming a punitive responsibility system.

For context, in terms of data on offending in the 1990s and 2000s, institutions directly linked to the political right-wing of the country reported dramatic increases. For example, *Libertad y Desarrollo*, an authoritarian right-wing think tank, reported that robbery increased by 120% between 1977 and 1996 (López 2000), while *Paz Ciudadana*, another right-wing linked institution, claimed an increase in robbery cases of 39% between 1990 and 2000, with robbery with violence rising in over 200% (Folch 2002). However, when looking in greater detail, other researchers question the rising crime levels, describing crime rates as an unstable trend of ups and downs (López 2000; Dammert, Lunecke 2002), while Ana María Morales (2012) highlights an increase in crime reports instead.

Therefore, there is little to back up to the notion of dramatic increases in youth offending. However, in the landscape of the early 2000s, crime control was already politicized. This had its own impact on the need to reform, as some politicians identified the urgency to change the previous tutelary system, not because it collided with the UNCRC, because it was an ineffective and abusive system, nor the fact that despite an update in 1967, it had retained the same principles of the law of minors from 1928. The urgency came about because the current system was “inefficient to reach the prevention and punishment goals required” (Ministry of Justice Bates in Congreso Nacional 2005: 241).

From that point, as discussions progressed, the focus on rights and the UNCRC recommendations diminished until most discussion was about security for citizens and using punishment to make young people responsible. For example, in the words of Deputy Forni: “It should be specifically mentioned that a key element of this project is the responsibility for the offences committed” (Congreso Nacional 2005: 345). This rhetoric became even more dominant after the law draft went into the second legislative stage in the Senators' chamber in 2005 (Congreso Nacional 2005). It is worth remembering that this was the year of presidential,

senators and deputies' elections during which youth crime control had a central role, and Bachelet won the presidential seat.

Other key concepts that had a prevailing influence over youth justice reform, displacing children's rights concerns, were security,² ending impunity,³ and punishment.⁴ This is particularly relevant as it evidences the influence of punitive discourses, which can be considered a continuation of authoritarian views towards control, while altering the meaning of concepts such as impunity from crimes against humanity towards offending, security from state violence towards security from crime, and rights from the protection of human rights and the commitment of the state to guarantee them, to rights as against subsections of the population, and rights distorted into duties and responsibilities citizens needed to satisfy: "Today, we make them not only subjects of rights, but also of duties" (Deputy Soto in Congreso Nacional 2005: 262).

This does not mean that there were no opposing voices. Some parliamentarians maintained strong support for children's rights (For example: "It pains me that youth offending is treated not like a children's problem, but as an object of political debate, as if through this the government or the opposition could win" (Senator Esquide in Congreso Nacional 2005: 513)), but their voices did not carry through the discussion (Congreso Nacional 2005). In consequence, the focus on children's rights and crime control was reduced to a new youth justice system, as the words of Surrogate Minister of Justice Arellano evidence: "It is much better to invest public policy money in adolescents' penal responsibility than in any other mechanism to fight crime" (Congreso Nacional 2005: 1041).

These discussions show how the emphasis made by politicians replaced children's rights concerns and privileged punitive approaches. In consequence, the parliamentary discussion of the 2005 law, with a modification in 2007 under the law 20,191, before the LRPA was implemented, led the reform from one punitive system to another. The initial drafts of the new youth justice in 2002 proposed a specialized system with no minimum imprisonment term and a maximum of three and five years depending on the age of the young person, elements from restorative justice and a series of diversion measures (Congreso Nacional 2005; 2007). By 2007, the system being implemented had no real specialization in practice, as the same staff worked with young people and adults, leading to no meaningful differentiation between them (Santibáñez, Alarcón 2009; Werth 2013). A minimum of one year was added to imprisonment sentences and the maximum was raised to five and ten years accordingly, a series of diversion measures effectively disappeared, institutionalization was added as a possible sentence option for more offenses,

² "This project is a great step in the fight to have more citizens' security" (Deputy Burgos in Congreso Nacional 2005: 1096).

³ "It is precise that there is clarity regarding the ending of impunity" (Senator Coloma in Congreso Nacional 2005: 972).

⁴ "It is assumed that adolescents have responsibility, which makes possible the imposition of penal punishments" (Minister of Justice Bates in Congreso Nacional 2005: 240).

the elements of restorative justice were removed, and the age to be considered as penally liable for offending behaviour was set at 14 years of age (Congreso Nacional 2005; 2007). As a result, the number of young people in custody increased, even during times when detentions decreased, and imprisonment has been widely used despite other measures being available (Langer, Lillo 2014; Radiszcz et al. 2018).

5. Discussion

Populism has been described as both a possible threat or a corrective to democracy (Mudde, Rovira Kaltwasser 2012). In the Chilean case, it acted as a diversion of what democracy required. The right-wing was not willing to accept their past mistakes, and the government was also at fault, as the impunity of the Armed Forces, the lack of justice for the Human Rights violations and the legacy of the dictatorship continued under their rule (Hilbink 2007; Borzutzky 2017). Therefore, there was particular interest in diverting attention away from all outstanding issues from the past, both to avoid criticisms, and to return themselves to the centre of the political landscape as the main actors.

The Chilean political elite needed to find new ways to engage the citizenship and gather electoral support. This need became even more prominent after two radical political changes in such a short span of time (from democracy to dictatorship and then again to a new electoral democracy), as citizens had lost trust in political participation. There was a distance from political life in the new democratic order, where Chile before the dictatorship had been characterised by high levels of civic participation, there was now barely any participation (Constable, Valenzuela 1993; Huneeus 2000). In consequence, the right-wing needed to legitimize their position as a valid democratic opposition, distant from their previous violent practices. Similarly, the governing coalition had most of the support, but around 40% of the electorate had voted for the authoritarian regime to continue. They needed to prove they could rule, and that democracy was a better option. Perhaps this last element sounds obvious, but the authoritarian regime had permanently criticized both democracy and politicians, pointing them as unable to rule the country (Constable, Valenzuela 1993; Lawson 2005).

The result was a discursive reduction of the social, economic, political and moral debts left by the dictatorship and the resulting uncertainty, instability and increased concerns over daily life in a new democratic order, towards crime in general and youth offending specifically. What is more, the expansion of a punitive populism at times of transitions from authoritarian regimes has been previously described in Latin America (Bonner 2018). A story in which fear of crime, security concerns and worries about youth crime are created by the right-wing elite, and quickly adopted by the government can be also found in what Máximo Sozzo

(2016) has described as populism “from above”, when talking about similar issues in Argentina, where concerns started not from the people, but from the authorities in their efforts to legitimize their position.

Youth justice reform provided the political elite with a powerful topic to criticise the government or the opposition and to win votes (Álvarez 2014). At the same time, it allowed them to state their support towards the protection of human rights in general, by granting due process and the rule of law to those who presented offending behaviour. It also gave strength to statements of commitments towards the protection of citizens and their rights, and towards more modern and efficient ways of crime control, different from those applied under authoritarianism. As such, both Concertación and the opposition tried to appeal to the general population by presenting themselves as protectors, as ready to address citizens’ concerns while implying the current authorities had failed to do so.

In this context, resorting to an elite form of punitive populism spread by the media makes sense, as it makes it harder to identify who is in fact leading the political discussion, which voices are being heard, and who is benefited by it (Andrade 2020). It becomes even more ambiguous when considering that the populists are the ones defining “the people”, who the enemy is, and what demands exist to overcome the situation (Mudde, Rovira Kaltwasser 2012).

This populist punitiveness becomes more evident as a political tool when keeping in mind that none of the actors had the intention of altering the status quo or changing the establishment, as the political elite has remained mostly the same until recent years, and the latter changes have little to do with crime control and youth offending but with the legacies of the dictatorship. Chilean politicians only used it to position and validate themselves as a better option than those already in the government. However, citizens were never really seen as an active part of the political order. References to “the people” were only used to give weight to otherwise weightless claims. Therefore, what predominated at the end were the controlling, “responsibilizing”, individualizing, and punitive approaches of the authoritarian past. This dragged the lack of commitment to human rights into modern times and led to a new and more modern punitive youth justice.

As a result, the legacies of the dictatorship in terms of political system and elite, social and institutional burdens from the past, and through the influence of authoritarian logics such as the widespread focus on control and efficiency (Fortete, Cesado 2009) heavily impacted this reform process. These effects were hard to counter, as new penal logics, research, and the development of new approaches to deal with crime control and justice had been not permitted in the past, leaving the country with a wide gap in those topics and the normalization of practices such as assigning individual responsibility. And thus, Chile followed the punitive turn described in many other countries from Latin America and the global north (Newburn, Sparks 2004; Dammert, Malone 2006; Pinheiro 2007; Becket, Godoy 2008; Muncie, Goldson, 2012; Chaney 2015).

Conclusion

This article has shown how youth offending attained an unprecedented political position from the mid-1990s onwards in Chile, and how this position was the result of a political strategy that favoured punitive populism. It has also stated how the reform took a more punitive direction by following politicians' heightened claims, supported by statistics of right-wing think tanks based on "data" from a country with no reliable measurement system prior to the 1990s, and a media heavily permeated by right-wing ownership and ideas.

The Chilean case allows to it to be seen, in practical terms, how the dynamics of elite-driven penal populism use the voice of the people in order to maintain the status quo, for example, by reducing all social issues to one single aspect. Moreover, it evidences how the populist strategy is not necessarily concerned with democracy, with representing the those left unheard, or with challenging the establishment. Instead, it can be used to support a vicious circle of ever-increasing control and violence against citizens, and while acting under their names, it in fact silences them. The marginalized population becomes even more excluded, and the elite retains unchanged privilege. It is then worth including in the analysis of penal populism that the democratic and authoritarian dynamics of a given locality, as a lack of commitment towards democratic practice may lead to use the voice of the people as a tool to legitimize authoritarian practices and extend them to other aspects of social policy, thus normalizing such practices. In this sense, the strengths and weaknesses of democratic order should also be considered, in which elements such as accountability, space for civic participation by the general population, and ways for citizens to express their views and to be aware of how local institutions work, become essential. Chile lacked these elements, and as a result, the discursive commitment to children's rights in practice eventually became further exclusion and control, while the fears and needs of both the general population and young people remain unaddressed.

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