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Citizen Views on Punishment: the Difference between Talking and Deciding

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Abstract

In 2004, the Province of Córdoba, Argentina implemented lay participation in criminal decisions by means of Law 9182. The law was passed within a context of national debate concerning efficient measures to fight against insecurity and crime. These debates were brought about by a social movement led by Juan Carlos Blumberg, which demanded harsher penalties and judicial reform as means to improve urban safety.

Data obtained in two public opinions studies, conducted in 1993 and 2011, are used to analyze trends in attitudes towards criminal punishment, including issues such as the image of criminals or opinions on capital punishment. The revision also includes the influence of the fear of crime on attitudes towards punishment.

The analysis of citizen views on punishment extends beyond public opinion data to the judicial field, reviewing how these views are expressed during jury service. Using a set of 213 sentences decided between 2005 and 2012, juror and judge decisions on the same cases are compared.

Key words

Lay participation in judicial decision-making; attitudes towards criminal punishment; fear of crime; Argentina

Resumen

En 2004, la provincia de Córdoba, Argentina, estableció la participación ciudadana en las decisiones penales por medio de la ley 9182. La ley fue aprobada en el contexto de un debate nacional sobre las medidas más eficientes para luchar contra la inseguridad y el delito, impulsados por un movimiento social liderado por Juan Carlos Blumberg. Las demandas de este movimiento incluían endurecimiento penal y reforma judicial, entendidos como medios para mejorar la seguridad.

Empleando datos de encuesta de población general recogidos en 1993 y 2011, el artículo analiza las tendencias en actitudes hacia el castigo penal, incluyendo temas como la imagen de los delincuentes y las opiniones sobre la pena de muerte. Se

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revisa especialmente la influencia de la sensación de inseguridad sobre las actitudes respecto del castigo.

El análisis de las actitudes ciudadanas ante el castigo se extiende hacia el terreno judicial, revisando la dureza de las decisiones de los jurados. Para ello, se comparan los votos de jueces y jurados, registrados en 213 sentencias emitidas entre 2005 y 2012.

Palabras clave

Participación ciudadana en la Justicia; actitudes hacia el castigo penal; sensación de inseguridad; Argentina

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1. Introduction

In 2004, the Province of Córdoba implemented lay participation in criminal decisions by means of Law 9182. It adopted a mixed tribunal with a lay majority for criminal trials in which aberrant crimes and corruption are alleged. The tribunal, composed of eight lay jurors and three professional judges, deliberates and decides jointly by majority vote (Law 9182).

The law was passed in a context of national debate concerning efficient measures to fight against insecurity and crime. These debates were inspired by a social movement led by Juan Carlos Blumberg, which demanded harsher penalties and judicial reform as means to improve urban safety. The movement understood citizen participation in criminal justice decisions as a tool to adjust punishment levels to social demands and as a way to correct the guarantee-based approach generally held by magistrates, which is considered to be too benign.[1]

However, the arguments considered in the provincial legislature when the initiative was presented were quite different. During the parliamentary debate, it was evident that one of the principal aims of the law was to restore the judiciary's prestige (Urquiza and Rusca 2009, Bergoglio 2012). In the words of Legislator Cid, the bill's sponsor, when presenting the bill for Law 9182:

> [T]he Argentine people demanded justice for they felt they had none; the Argentine people demanded security for they felt none; the Argentine people demanded to believe in their institutions for they no longer believed. So, we legislators in Córdoba must provide answers to the people's demands and create those institutions which will allow us to restore the social contract that has been lost, in order to generate a bridge between the people and their leaders; to generate that belief that got lost in time. We must reconstruct the social contract. That is why trial by jury is necessary, because it is an instrument that leads toward the aforementioned goal (Ferrer and Grundy 2005, p. 101)[2].

After nine years of lay participation in criminal trials, it is interesting to analyze whether the institution of mixed tribunals has fulfilled the expectations held by those who promoted this innovation. This analysis is also important given that security concerns have become a standing item on the public agenda. This article focuses on citizen views on punishment, and their influence on jury service.[3]

The first section summarizes trends in the fear of crime, an issue whose effects on the demand for punishment was observed in Córdoba twenty years ago (Bergoglio and Carballo 1993). Attitudes towards punishment are also explored through themes such as social images of offenders, the choice of a "tough" criminal policy or opinions regarding the death penalty. Data obtained in two public opinion studies, conducted in the city of Córdoba, Argentina, are used to discuss these issues. The first survey (400 respondents) took place in 1993, before the introduction of lay participation. The second study was performed in 2011, when mixed tribunals had

[1] The idea that lay participation might lead to greater penal toughness was put forward by different actors during the public debate preceding the law. While the Blumberg movement considered it desirable, and included it in their demands (Schillagi 2006, Kessler 2009), some sectors of the legal profession opposed jury trials for this reason. For example, the prestigious criminal lawyer Zaffaroni (Justice of the Supreme Court of Justice of the Nation) declared that the idea of employing jury trials was dangerous for it may become "a quick lynching tool for the poor" (Zaffaroni 2012).
For a detailed description of the social and political context of the law, including survey data on lawyers' attitudes to punishment see Bergoglio (2008).

[2] In Spanish in the original: "El pueblo argentino pidió justicia porque sintió que no la tenía; el pueblo argentino pidió seguridad, porque no la sentía; el pueblo argentino pidió creer en sus instituciones porque ya no creía. Entonces, nosotros, los legisladores de Córdoba, debemos dar respuesta al reclamo popular y crear aquellos institutos que nos permitan reponer un pacto social que se ha perdido, para generar un puente entre la gente y sus dirigentes; para generar aquella creencia que se perdió en el tiempo. Tenemos que reconstruir el pacto social. Por eso son necesarios los juicios por jurado porque es un instrumento que nos lleva al objetivo mencionado."

[3] Bergoglio (2012) explores the contribution of lay participation on judicial decision-making processes in to order to rebuild trust in the judicial system.

functioned for seven years, and included 434 cases. Both were done on random samples of the general population aged 18 or older.

The analysis of citizen views on punishment is not limited to public opinion data, but extends to the judicial field, and includes how these views are expressed during jury service. The second section compares juror and judge decisions in the same cases, using a set of 213 sentences decided between 2005 and 2012.[4]

2. Feelings of insecurity

The political and social context in which the Blumberg movement flourished may be described as marked by the presence of "penal populism":[5] a growing claim of harsher penal policies. These policies are seen as the only tool to compensate for feelings of insecurity and the fear of crime in a society in which the sensationalization of crime has been a staple of the media. Penal populism seems also to be connected to people's feelings of insecurity as a result of social fragmentation and the erosion of social bonds characteristic of modern neoliberal politics. In these conditions, the promise of criminal justice reform is a tool to assuage the worries of groups frustrated by the state's inability to cope with the insecurities of late modern life.

Because of the complex nature of insecurity, the difficulty in conceptualizing this issue has led to methodological debates. These debates attempt to find the best measure for a phenomenon that cannot be reduced to its emotional dimensions. Kessler (2009) notes that the current treatment of insecurity has led to a distinction between concern (which has a political dimension and involves attention to a social problem), risk perception (which has a cognitive dimension, and assesses the likelihood of being victimized) and fear (which has an emotional dimension, and entails the idea that you or one of your loved ones could be a victim of a crime). The distribution of these dimensions differs across social groups, adding complexity to this research field. However, as Kessler indicates, in the Argentine cities where data series are available, these three dimensions have shown considerably high numbers during the last decade.

Moreover, recent surveys - conducted by the Observatorio de la Deuda Social Argentina - that have monitored the levels of victimization and fear of crime since 2004, show that both indicators have remained high in the country in recent years (Salvia 2013).

Given the extent of the feeling of insecurity about crime, its inclusion on the public agenda is not surprising. In 1995, only 2% of Argentines placed insecurity at the top of the list of problems. However, in 2011, the issue is selected as the most important by 34% of respondents.[6] Even if insecurity levels show some autonomy with respect to trends in criminal activity rate, to understand these changes one must keep in mind that since the early nineties crime rates have almost doubled.[7]

This research focused on the emotional dimension of insecurity, defined as fear of crime, both in general and during evening walks in the neighborhood. While recent research often includes other indicators linked to cognitive and political dimensions of insecurity, the need to preserve the comparability of the data led us to maintain the formulation of the questions asked in the 1993 survey.

[4] Access to this documentation was made possible by the Jury Office of the Judiciary, whose cooperation was decisive for the success of this work.
[5] The concept of penal populism was introduced by John Pratt in 2007. For a detailed analysis of the assumptions behind this approach and its consequences on penal policy, see Dzur (2012).
[6] Latinobarometro data, available from www.latinobarometro.org.
[7] In 1993, the national crime rate was 1,650 offenses per 100,000 inhabitants. That number was 2,413 for Córdoba province. In 2008, the national rate peaked at 3,298.42 while the provincial rate reached 4,307.73 (Data published by the Dirección Nacional de Política Criminal 2008a, 2008b).

Table 1 - Fear of crime, 1993-2011

Question		Year		*Pearson Chi-square*[*]
		1993	2011	
Concerning public security, would you say you feel	Safe	22.1%	23.0%	Not significant
	Unsafe	77.9%	77.0%	
Total		100.0%	100.0%	
How safe do you feel walking alone in your neighborhood after dark? Would you say you feel	Safe	26.6%	30.6%	Not significant
	Unsafe	73.4%	69.4%	
Total		100.0%	100.0%	

* The Chi-square test assesses whether paired observations on two variables, expressed in a contingency table, are independent of each other (Freedman *et al*. 2007).

As shown in Table 1, the fear of crime level was already high in 1993; the numbers for 2011 are substantially similar. Note that according to reports from the Observatorio de la Deuda Social, where a slightly different formulation of the question was used, the Córdoba levels of insecurity were close to the national ones on that date (Moreno 2013).

3. Trends in attitudes towards punishment

In this section we review trends in public attitudes towards criminal punishment. Before analyzing citizen views on criminal trials, we should observe how their experience in the legal world has changed in recent years. This is one of the sources used in the process of constructing shared meanings and developing the legal culture.

First, it should be noted that direct experience with the justice system has become more frequent; the percentage of the population with previous contact with courts has increased from 33% to 45% in the eighteen-year period covered by the research. The same has happened in regard to contact with lawyers, which has grown significantly. The proportion of the population that has consulted a lawyer increased from 40% in 1993 to 63% in 2011, a change related to the increased numbers of these professionals.[8]

The higher frequency of contact with the justice system and its actors is a clear sign of the growing role of the judiciary in social and political life. This growing contact is associated with democratic deepening, and has been described for both the country and Latin America in recent years (Smulovitz 2008, Domingo 2009). The influence of institutional consolidation on the legal culture – clearly visible when working with cross-cultural comparisons - is also observable in the longitudinal analysis of attitudes towards the law.

[8] There were 284 lawyers per 100,000 inhabitants in Córdoba in 2000, and 391 in 2010. Source: Official statistics published by the Poder Judicial de Córdoba for the year 2000 (Centro de Estudios y Proyectos Judiciales, Tribunal Superior de Justicia 2006). The information for the year 2010 was published by the Junta Federal de Cortes y Superiores Tribunales de Justicia de las Provincias Argentinas y Ciudad Autónoma de Buenos Aires (2010), an organization that coordinates efforts among the Judiciaries of different provinces.

Table 2 - Attitudes towards the law, 1993-2011

Attitudes toward the law	1993*	2011*	Pearson Chi-square**
People should obey the law even if it goes against their interest	49.1%	57.5%	8.918 significant for p< 0.012
Laws must be obeyed just because they are laws	39.2%	48.4%	9.989 significant for p < 0.007
We must obey only reasonable laws	25.1%	18.1%	6.040 significant for p < 0.049
The laws benefit a few and therefore do not deserve respect	22.1%	13.6%	11.448 significant for p < 0.003

* Percentage of respondents who agree
** The Chi-square test assesses whether paired observations on two variables, expressed in a contingency table, are independent of each other (Freedman *et al*. 2007).

Both surveys asked about the motives of obedience to the law.[9] As shown in Table 2, support for the universal nature of the law, an essential element of social adhesion to the rule of law, has grown significantly among Córdoba citizens.

The proportion of those who believe that we must obey rules even when they oppose our interests increased from 49% to 57% in the last eighteen years. Moreover, agreement with the statement "Laws must be obeyed just because they are laws" grew from 39% to 48% in the same period. Both of these changes reached statistical significance.

At the same time, support for conditional obedience – subject to a personal assessment of the nature of the law, its reasonableness or fairness - which was already quite low at the time of the first measurement, continued to decline, a trend that reached statistical significance.

In this context of increasing support for values associated with the rule of law, it is interesting to see how attitudes towards criminal punishment have changed over this eighteen-year period. The data in Table 3 indicate on both dates that the majority of the respondents prefer a harsh criminal policy.

The table reveals that dissatisfaction with the level of criminal punishment in our society is widespread. Almost half of the respondents agreed with the idea that a tough response is the solution to the problem of crime, a proportion that has not changed substantially in recent years. Similarly, attitudes that emphasize offender accountability for their actions are widely held.

However, these preferences for a harsh criminal policy do not translate into extreme attitudes. The majority of respondents oppose the death penalty. Similarly, the rejection of “vigilante” justice –which involves the taking of law enforcement into private hands– reaches significant values, which is a clear sign of the progressive consolidation of democratic institutions.

[9] The belief in the universality of the law has been the subject of many cross-cultural studies. See for instance Gibson and Gouws (1997), Gibson and Caldeira (1996). To study this issue in the Latin American context, see Concha Cantú et al. (2004) and Hernández et al. (2005).

Table 3 - Attitudes toward punishment, 1993-2011

Variable		Year		Pearson Chi-square*
		1993	2011	
If the state were tougher on crime, the crime problem would end	Agree	51.1%	53.3%	9.782 significant for p < 0.008
	Undecided	24.8%	16.6%	
	Disagree	24.1%	30.1%	
Total		100.0%	100.0%	
Offenders should be treated more like patients than as criminals	Agree	21.4%	20.8%	20.323 significant for p < 0.000
	Undecided	31.5%	18.8%	
	Disagree	47.1%	60.4%	
Total		100.0%	100.0%	
Do you think offenders receive enough punishment here?	Yes	10.0%	15.4%	5.422 significant for p <0.020
	No	90.0%	84.6%	
Total		100.0%	100.0%	
Concerning death penalty, you	Strongly agree	15.8%	13.4%	9.644 significant for p < 0.020
	Agree	16.6%	14.4%	
	Disagree	27.1%	21.2%	
	Strongly disagree	40.5%	51.0%	
Total		100.0%	100.0%	
No circumstances may justify the taking of law enforcement into one's own hands	Agree	38.4%	46.7%	18.493 significant for p < 0.000
	Undecided	32.3%	19.4%	
	Disagree	29.3%	33.9%	
Total		100.0%	100.0%	

* The Chi-square test assesses whether paired observations on two variables, expressed in a contingency table, are independent of each other (Freedman *et al*. 2007).

The table shows the evolution of these attitudes towards punishment during this eighteen-year period. Although the image of the offender as fully responsible for his actions has grown significantly, adherence to hard policies that combat crime has basically remained stable. Dissatisfaction with the level of criminal punishment experienced a small, but statistically significant, reduction.

At the same time, the rejection of extreme punitiveness has deepened: opposition to the death penalty has grown significantly and disagreement with the options involved in taking justice into one's own hands experienced similar modifications (statistically significant changes).

The table also allows us to observe how views on penal policy have polarized during this period, along with the new place of security issues on the political agenda. The number of undecided or neutral responses has decreased.

It may be said, in summary, that on both dates, the majority of respondents prefer harsh penal policies that emphasize offender accountability, but this does not translate into extreme measures in terms of punishment. At the same time, attitudes to punishment reveal the slow, yet progressive institutional consolidation, as expressed in the small growth of satisfaction with the current level of criminal punishment, as well as the increased rejection of "vigilante" justice.

4. Attitudes towards punishment and feelings of insecurity

During the past few decades, the relationship between fear of crime and punitiveness has been widely discussed in Western societies. Empirical results on this issue are heavily dependent on the methodological approach used, and cross-

cultural analysis is difficult due to political and historic experiences that influence legal culture (Kury and Kuhlmann 2011). In Argentina, as in other countries, it is possible to find notorious examples of how a singular heinous crime may prompt an initiative for tougher sentencing guidelines.[10]

Previous research in Córdoba indicated that although the feeling of insecurity based on crime is not associated with extreme positions, such as support for the death penalty, it has significant connections with preferences for a criminal justice system that convicts all guilty parties, even at the expense of mistakenly condemning an innocent (Bergoglio *et al*. 1991, Bergoglio and Carballo 1993).

Kessler (2009) suggested that in Argentina the connection between a sense of insecurity and punitiveness has changed over time. Employing public opinion data and media content analysis, he identified three different phases. In the first, extending from the return to democracy in 1983 to 1989, the central concern focused on crimes linked to the dictatorship, either by their authors or by their characteristics. Beginning in 1989, in a context marked by hyperinflation, an association between social issues and feelings of insecurity occurred, and the connection between unemployment and crime rates was emphasized. As of 2003, despite the economic recovery, the issue of insecurity has taken hold, both in the media and on the public agenda, in part because of the durability of the problem, and the feeling that the tested solutions are not enough to cope with the problem.

Kessler's analysis suggests that at present the feeling of insecurity has extended to social groups and sectors with different political ideologies, marking the end of a direct relationship in Argentina between security concerns and authoritarianism. He notes the similarity of this trend with the experience of France in recent times.

As seen in Table 4, in our data, the correlation analysis between the feeling of insecurity and attitudes towards punishment also shows changes over time. In 1993, they are not practically significant, except in the case of support for the death penalty, although the association is very weak.

[10] In August 1990, President Menem proposed the introduction of the death penalty after the homicide of Diego Ibáñez.

Table 4 - Attitudes toward punishment and feeling of insecurity- 1993-2011

Variables		1993	2011
		Feeling of insecurity	Feeling of insecurity
Punishment level is adequate	Pearson Correlation	.085	.113(*)
	Sig. (bilateral)	.095	.020
	N	389	421
Preference for a tougher state	Pearson Correlation	-.085	-.315(**)
	Sig. (bilateral)	.093	.000
	N	397	439
Offenders should be treated as patients	Pearson Correlation	-.046	-.032
	Sig. (bilateral)	.356	.509
	N	396	432
Taking the enforcement of law into your own hands is not justified	Pearson Correlation	.033	.029
	Sig. (bilateral)	.510	.544
	N	394	439
Death penalty support	Pearson Correlation	-.099(*)	-.142(**)
	Sig. (bilateral)	.050	.003
	N	396	439

* Correlation is significant at the 0.05 level (2-tailed).
** Correlation is significant at the 0.01 level (2-tailed).
Note: Correlation is a bivariate analysis that measures the strengths of association between two variables. The value of the correlation coefficient varies between +1 and -1. When the value of the correlation coefficient lies close to ± 1, then it is said to be a perfect degree of association between the two variables. As the correlation coefficient value goes towards 0, the relationship between the two variables will be weaker (Freedman *et al*. 2007).

But in 2011, connections between fear of crime and attitudes toward punishment are more defined. The demand for a tough penal policy, the emphasis on offender accountability and the support for the death penalty presented statistically significant correlations with the fear of crime, which follow the expected direction.

The data confirm that, at least in Córdoba, those who feel unsafe from crime are, at present, more likely to support harsher penal policy options. In this sense, the feeling of insecurity seems to have a clear impact on punitiveness, encouraging the adoption of more stringent policies in terms of punishment. At the same time, as Kessler noted, it is possible that given the widespread concern about insecurity, it is no longer exclusive to groups characterized by their authoritarian ideology. Precisely for this reason, the effects of insecurity on attitudes towards punishment are disturbing.

It is true that, taken together, the changes in attitudes towards punishment over this eighteen-year period have been relatively modest, and have been accompanied by a rejection of extreme positions, and a progressive consolidation of attitudes supporting the rule of law. However, the link between feelings of insecurity and punitiveness revealed by the comparative analysis in 1993 and 2011 is clear. It is important, therefore, to examine whether these attitudes influence lay participation in criminal trials.

5. Attitudes toward punishment in jury trials

We may now ask how these preferences for a tough penal policy reveal themselves in the practice of jury trials. What are citizen views on punishment when the

sentence ceases to be a conversation subject and becomes a decision for which responsibility is shared? To answer this question, we have analyzed the differences in the perspective of judges and lay jurors before the same cases, using 213 sentences decided in mixed tribunals in the province of Córdoba between 2005 and 2012.[11]

5.1. Lay participation in Córdoba

In Córdoba, lay participation in criminal trials follows the civil law tradition, in which jurors sit together in mixed courts with professionally trained judges. This model is used in different European countries, such as Germany, Italy, France, and Poland. Several new systems of lay participation have also adopted this model, for example, Japan and South Korea.[12]

The mixed court is composed of three professional judges and eight lay citizens (four men and four women), whose names are obtained from a list randomly chosen each year from the voter rolls. They deliberate and jointly decide questions of fact by majority vote. The presiding judge can only vote in the case of a tie; she is charged with explaining the reasoning behind the lay citizen votes, if it differs from the judges' decision. Sentencing decisions are made by the three professional judges alone.

Table 5 - Main Features of Sentences Reviewed - 2005-2012

Cases		
Cases where the jury was called to serve	213	
Victims	229	
Defendants	364	
Offenses	Nr.	%
Homicides	265	73.6
Attempted murders	23	6.4
Sexual abuse followed by death	7	1.9
Offenses against the State	33	9.2
Property offenses	17	4.7
Other offenses	15	4.2
Total	360	100
Decisions		
Total		360
Acquittals		75
Convictions		285
Life term convictions		65
Note: The number of defendants does not coincide with the total number of decisions. The trials of four defendants were not completed for different procedural reasons		

5.2. Judge and jury decisions in previous research

Table 5 summarizes the main features of these cases, in which 364 defendants were tried. Homicide, effective or attempted, is the principal offense dealt with in these trials (80%). Trials for crimes of corruption, where government officials are charged, are rare (9.2%). Only twenty-one trials for this type of crime have occurred since the law came into effect. Thirty-four low-ranking public officials were

[11] In consideration of the generalization of these results, it should be noted that, according to official statistics, 215 sentences were decided with lay participation between 2005 and 2011 (http://www.justiciacordoba.gob.ar/justiciacordoba/). Our corpus includes 189 cases for that period, or 87% of the total (Centro de Estudios y Proyectos Judiciales, Tribunal Superior de Justicia 2015).

[12] For a detailed analysis of the differences between the Anglo-Saxon jury and the European mixed court, see Goldbach and Hans (2014).

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involved in these cases.[13] Decisions involving an acquittal occurred in only 21% of the cases; sixty-five life term convictions were decided.

Empirical research on differences between jury and judge decisions started in the United States as early as 1966, when Kalven and Zeisel looked at over 3,500 state criminal trials. They found that while judges and juries usually agreed on the proper outcome of a case (78%), when they disagreed, juries were more lenient toward defendants than judges.[14]

More recent research contradicts that information. Levine (1983) compared conviction rates in jury and bench trials in the 1970s, reporting higher conviction rates in jury trials. He attributed the difference to a conservative reaction connected to fear of crime. A study conducted by King and Noble (2005) found patterns remarkably similar to those reported by Levine.

Using government records in over 75,000 federal criminal trials decided between 1945 and 2002, Leipold (2005) was able to describe the evolution of conviction rates in jury and bench trials. Between 1945 and 1964, judges invariably convicted at higher rates than juries. In the second phase (1964 – 1988), the conviction rates were quite similar. From then on, the juries emerged as the decision maker more likely to convict, as judges became more acquittal prone. Leipold concluded that in this last period, some of the gap in conviction rates may be explained by identifiable features of those cases that defendants directed toward judges rather than juries.

Recent criminological research has connected the long-term trend towards greater punitiveness in the United States to the increased use of plea bargaining and the decline of jury trials, which meant that more judicial decisions are made by professionals. These arguments have been developed by Dzur (2012), who associates the growth of the contemporary penal state with the increasing bureaucratization of the criminal justice system. He concludes by proposing to revitalize the jury trial in order to produce a better judicial system.[15]

The evidence for other countries is varied. In Russia, where the new Constitution established juries following the Anglo-Saxon model in 1993, Machura (2003) assumes that juries are more lenient than judges. He reported that generally, Russian courts acquit in 0.4% of the cases, while Russian jurors acquitted in 12% of the cases in 2002. Comparing over 80,000 sentences decided with and without juries in Spain between 1891 and 1932, Toharia (1987) concludes that the final outcome with both procedures is quite similar. The acquittal rate reached 45% when there were lay persons among the decision makers, and 42% when the decision was made by the judge alone.

The evidence for mixed tribunals is limited. In Venezuela, Han *et al*. (2006) analyzed the experience in the region of Zulia, between 2001 and 2004, and found that the introduction of lay participation had not changed punishment levels. In Bolivia, Orias Arredondo (2013) reported different patterns of response in judges and juries. While ordinary citizens often react more severely in cases of homicide, their attitude is much softer in crimes connected with drug use or trafficking.

[13] For a detailed revision of the effects of lay participation in corruption cases, see Rusca (2013).

[14] As Diamond and Rose (2005) point out, the methodological difficulties posed by this approach are significant. However, a recent revision of this study confirmed most of the original conclusions (Farrell and Givelber 2010).

[15] Summarizing his proposal, Dzur indicated: "Three kinds of reforms have a base of support among academics and practitioners. First, jury reforms already endorsed by many American judges and lawyers, like allowing note taking, deliberation during trial breaks, and questions for witnesses, further the goals of communication and responsibility and can be easily implemented. Second, a more aggressive line can be taken on the necessity of jury trials without deviating from core strands of legal practice and theory (. . . .) Third, other, more controversial changes should be carefully considered, such as increased role for juries in sentencing" (Dzur 2012, p. 123).

5.3. Judge and jury decisions in Córdoba

Córdoba provides useful opportunities to analyze differences between judge and jury decisions, given that we have a written registry of the decisions made by each of the judges and juries that took part in the deliberations. According to legal provisions, the participation of lay people is restricted to deciding two issues: whether the crime charged was committed and whether the defendant was the person who committed the crime. In this way, lay participants are called to assess facts together with the judges, while legal issues (such as the duration of the sentence) are left to judges alone.

The information pertaining to the votes in each decision is restricted, of course, to the final decision of each member of the tribunal and neither reflects the richness of the debates nor the dynamics of the participation. It is nonetheless very useful to analyze the differences in the perspective of judges and jurors in the same cases. The following table shows the ways in which the 360 reviewed decisions were reached.[16]

Table 6 - Vote Results in Mixed Tribunals

Rulings	No.	%
Unanimity	284	78.9%
Majority composed of	76	21.1%
All technical judges and at least 4 jurors	50	13.8%
1 technical judge and at least 5 jurors	16	4.4%
At least 6 jurors	2	0.6%
No data	8	2.2%
Total	360	100.0%

Source: Author's own study of 213 registered sentences in the 2005 - 2012 period (on file with author). These sentences decided the situation of 360 defendants.

Since they sit all together during the deliberations, judges have the chance to conduct the process and influence the direction of lay votes. Reviewing research on mixed courts in different countries, Hans (2008) notes that unanimity rates over 90% are frequent in these cases. This raises questions about the actual levels of participation of citizens in the deliberations. In the Latin American area, Orias Arredondo (2013), who studied mixed courts in Bolivia, has reported a unanimity rate of 89%.

The level of concurrence between judges' and citizens' opinions is a little lower in Córdoba: in 79% of the cases, the verdict is reached unanimously. However, if we take as a whole the unanimous decisions and the decisions reached by majorities composed of two technical judges and half or more of the jurors, the convergence of opinions between lay people and professionals is highly significant - over 90% (Table 6)-.

The level of autonomy reached by citizens in their decisions is obviously arguable. In Córdoba, the Provincial Supreme Court commissioned a study of the opinions of the citizens who had acted as jurors. The survey included 715 respondents; a large majority of them (84%) declared that they had been able to present their own views in the case during the deliberation (Tarditti *et al*. 2012).

Amietta (2011) has described the practices by which professional judges attempt to govern jurors and keep their behavior as decision-makers under control in the Córdoba mixed tribunals. His analysis derives from Foucault's notions of power, discipline and governmentality. Summarizing his findings, Amietta reports:

[16] The number of decisions reached is greater than the number of deliberations, since a single verdict may resolve the situation of more than one defendant.

> The narratives of the participants showed how, besides teaching them the norms of judging, judges also observe, control and, if necessary, correct jurors' conduct. I described this relationship as a pedagogical one, reproducing and reinforcing power relations largely demarked by knowledge: the possessors of a legitimate body of knowledge become legitimate educators and evaluators in the face of those who lack it. My work also showed how these practices are accompanied and supported by demonstrations of courtesy and respect to jurors and, relevantly, by bestowing on them small signs of the privileged status they hold 'as judges' (Amietta 2011, p. 25).

During our own fieldwork, most jurors reported that they felt respected during deliberations. Lay jurors said that they were able to take part in the tribunal's deliberation, and while professional judges oriented them in cases of doubt, they did not attempt to influence their decisions. However, two jurors affirmed that the judges pressed them to change their point of view. Both professionals and lay persons interviewed for this project admitted that jurors had access to the prosecution file of the case, a practice forbidden by Law 9182, which has been pointed out by Amietta as one of the mechanisms used by judges to influence jurors' opinions.[17]

The high proportion of unanimous cases indicates an important concurrence in the points of view held by the jury and judge in the evaluation of the facts. However, it is important to analyze how judges and jurors differ when faced with the same cases. Information regarding the composition and orientation of votes in cases that were resolved by a majority, which appears in Table 7, allows us to observe these differences.

In twenty out of sixty-four decisions (see grey area in the table), there is one technical judge among the majority and the other aligned with the minority. We can rightly assume that we are facing borderline cases, where the differences are negligible.

In the remaining cases, however, the difference between professionals' and laypersons' opinions is clear: the two judges vote in the same bloc, opposing a group entirely composed of jurors. In forty-six of these instances, the laypersons make up the minority, and only in two cases, the majority, imposing their decisions on the legal professionals.

It is interesting to note that in thirty-two out of forty-eight cases (66%), when juror decisions are different from judges' votes, all of these decisions turned out to be more lenient than those adopted by the judges: either because of insufficient proof or because a less serious accusation was chosen.

[17] A discussion of the role of written and oral practices in jury trials can be found in Bergoglio (2010).

Table 7 - Cases Resolved by Majority

Majority composition	***Nr. of cases***	***Majority decision***	***Minority composition***	***Minority position***
All technical judges and some jurors	10	Acquittal	Only jurors	Tougher: Sufficient proof to convict
All technical judges and some jurors	31	Conviction	Only jurors	Softer: Should choose a less serious accusation, or the proof considered insufficient to convict
All technical judges and some jurors	1	Conviction	Only jurors	Tougher: Should choose a more serious accusation
All technical judges and some jurors	4	Conviction	Only jurors	Divided
At least one technical judge and jurors	1	Conviction	One technical judge	Tougher: Should choose a more serious accusation
At least one technical judge and jurors	3	Conviction	One technical judge	Softer: Should choose a less serious accusation, or the proof considered insufficient to convict
At least one technical judge and some jurors	7	Conviction	At least one technical judge and some jurors	Softer: Should choose a less serious accusation, or the proof considered insufficient to convict
At least one technical judge and some jurors	2	Conviction	At least one technical judge and some jurors	Tougher: Should choose a more serious accusation
At least one technical judge and some jurors	7	Acquittal	At least one technical judge and some jurors	Tougher: Sufficient proof to convict
Jurors only	1	Acquittal	Technical judges, and some jurors	Tougher: Sufficient proof to convict
Jurors only	1	Conviction	Technical judges, and some jurors	Softer: Acquittal
Total	68			

Source: Author's own study of 213 registered sentences in the 2005 - 2012 period (on file with author). These rulings show the adjudication of 360 defendants.

To sum up, it is possible to say that the revision of majority and minority votes during an eight-year period indicates that the introduction of lay participation in criminal matters has not resulted in a greater conviction rate. Jurors tend to agree with judges, and many of the decisions are made by unanimous vote. However, lay citizens defend a different opinion in some cases, and their decision is generally more lenient. Fortunately, the fears of greater punitiveness due to lay participation in judicial decisions can be discarded for now.

6. Concluding remarks

The analysis in the preceding pages has brought to light the fact that attitudes towards punishment have become stricter in recent years. The changes are

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relatively modest, and have been accompanied by a rejection of extreme positions, and a progressive consolidation of attitudes supporting the rule of law. At the same time, the connection between the feeling of insecurity and punitiveness is significant, confirming the hypothesis that the widespread feeling of insecurity encourages the adoption of stricter penal policies.

However, the detailed analysis of the positions of judges and ordinary citizens, as expressed in the sentences pronounced by mixed tribunals, confirms that during the last eight years, lay participation in judicial decisions has not produced harsher punishments. Even if the introduction of lay participation took place in a context marked by demands for tougher sentencing guidelines, and feelings of insecurity are widespread, the data reviewed do not indicate a trend toward increased severity in sentences. Decisions made by magistrates and lay jurors often coincide; when the divergences between technical judges and lay participants are present, the position of the jurors is generally softer.

The comparison between public opinion data and sentences analysis highlights the gap between expressing a point of view on a political issue and making a meaningful decision on it. This distance has also been noted by other researchers. For example, after reviewing research on this issue in several countries, Roberts *et al*. (2002) have argued that when people are given new information about crime and justice in experimental settings their attitudes are less punitive than expected. Also, analyzing attitudes toward punishment in Spain, from a wide variety of empirical sources, Varona Gómez (2009) observed the contrast between responses to general opinion questions, and those obtained in response to the analysis of a hypothetical case presented by the researcher.

Our findings also help to confirm that deliberative spaces promote responsible citizen participation. As new initiatives to introduce trial by jury multiply in different parts of the country, these results are interesting. They show that citizens pressed to consider information about criminal offenses, and placed in a dialogic space, share the moral responsibility for punishment and do not adopt extreme attitudes. In this way, lay participation in judicial decision-making contributes to the collective construction of a democratic society.

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