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LEGITIMACY OF THE JUDICIAL SYSTEM AND LAY PARTICIPATION IN JUDICIAL DECISION-MAKING PROCESSES IN CÓRDOBA, ARGENTINA

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Abstract

As Tocqueville pointed out, countries in which juries have existed for many years show a strong public trust in the judiciary. It is interesting to ask whether these positive effects on legitimacy are also found in countries that have recently introduced lay participation in judicial decision-making processes. The question is particularly relevant where trust in justice is low, as is the case in Argentina. This paper explores the relationship between lay participation in judicial decision-making processes and trust in the judicial system in the Argentine province of Córdoba, where mixed tribunals were introduced in 2005 to deal with some aberrant crimes and cases of corruption.

Data obtained in two public opinion studies, conducted in 1993 and 2011 are used to discuss this issue. This paper also compares other survey data (Latinobarometer series 1995-2011) in order to review trends in trust in the judiciary in Argentina. The evidence shows that people who have performed jury service have a better opinion about courts. However, there has been little effect on the perceived legitimacy of the judicial system among common citizens, which is likely due to the limited scope of lay participation in Córdoba to date.

1. Introduction

Diverse countries - including Argentina, Japan, Korea, Russia, Spain and Croatia - have all in the recent past included ordinary citizens in their courts, either in traditional juries

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composed exclusively of laypersons, or in mixed bodies in which common citizens decide cases together with professional judges. In many cases, these changes are included in Criminal Law reforms, oriented to consolidate democratization processes. It is worth asking about the consequences of these institutional innovations, and reflecting how the presence of common citizens in judicial decision-making may influence the legal system as a whole.

Recent jury research has described the benefits and challenges of lay citizens' participation as legal decision makers¹. Jury service provides common persons with the experience of sitting in the seat of government, deliberating with fellow citizens, and rendering decisions that have meaningful consequences. This type of public participation may also boost their sense of civic responsibility.

When discussing the incorporation of trial by jury, those who favor lay participation maintain that it also performs a control function. Lay participation has historically been viewed as a mechanism to narrow judicial authority, since it deprives judges of sentencing discretion in criminal cases. It can contribute to verdicts which are consistent with the moral standards present in the community, and promote procedurally fair trials (Machura 2003). It has also been pointed out that the presence of jury trials reduces incentives to buy or pressure judges, improving judicial transparency (Lempert 2007).

In fact, several recent initiatives of lay participation have arisen in contexts characterized by dissatisfaction with judicial performance and a lack of confidence in justice. Klijn and Croes (2007) report on a debate concerning the desirability of the participation of laymen in the criminal justice system in the Netherlands, in connection with popular discontent about the leniency of judges. Fukurai and Krooth (2010) propose the re-establishment of the jury system in Mexico, in order to combat political and institutional corruption within the judicial branch of the government. The Argentine experience of mixed tribunals, carried out in the province (state) of Córdoba, was also framed by a lack of confidence in the judiciary². The common feature among these initiatives is that lay participation is understood as a tool to control the power of judges, which is proposed in response to a lack of confidence in the performance of judges.

¹ For a thorough review of the possible effects derived from juries, see Hans 2008; Voigt 2008.

² The introduction of mixed juries in Córdoba, Argentina is presented in paragraph 5.

It has also been maintained that this institution contributes to the legitimation of judicial power. Tocqueville observed the positive impact of interactions between judges and common citizens on the prestige of the judiciary: “The jury, then, which seems to restrict the rights of the judiciary, does in reality consolidate its power; and in no country are the judges so powerful as where the people share their privileges.”³ More recently, Machura (2003) and Marder (2005) have pointed out that citizen participation in judicial decisions has positive effects on trust in justice. Working with data from more than eighty countries, Voigt (2008) reports positive correlations between confidence in the legal system and lay participation.

These ideas have also been supported by theorists of deliberative democracy, who emphasize that the deliberation of public issues can benefit the legitimacy of political institutions. Researchers working on this conceptual framework have observed that jury deliberations arguably approach the ideal speech situation, offering a space for unconstrained deliberation, in which no force except that of a better argument is exercised. (Iontcheva, 2003, Gastil & Weiser, 2006).

Newly emerging systems offer an interesting opportunity to observe whether public legitimacy of a legal system is affected when citizens participate as decision makers, an issue difficult to study within stable existing systems (Hans 2008). From a Latin American perspective, this question is particularly relevant, since confidence in justice is chronically low in the region. In the interest of providing some elements to advance this discussion, this paper reviews changes in confidence in justice in Córdoba, Argentina, where mixed tribunals were introduced in 2005. Data obtained in two public opinion studies, conducted in 1993 and 2011 are used to discuss this issue. This paper also compares other survey data (Latinobarometer series 1995-2011) in order to review trends in trust in the judiciary in Argentina.

³ *Democracy in America*, Chapter XVI: Causes Which Mitigate The Tyranny Of The Majority In The United States, original edition 1840, accessible at

http://xroads.virginia.edu/~Hyper/DETOC/1_ch16.htm.

2. Legitimacy and Trust in Justice: Theoretical Remarks

Max Weber's theory of legitimacy is the starting point of most contemporary work on this issue. From his perspective, legitimacy arises when people feel an inner need to follow the rules or decisions of an existing power. Therefore, every domination will look for more stability by trying to raise the *belief* in the legitimacy of that domination. Following this approach, legitimacy should be analyzed within an existing social relationship, since it implies both the claim from the power or institution to be considered rightful, as well as the belief in the correctness of such a claim made by those who are subject to this domination.

Almost all the theories of legitimacy formulated in recent decades continue to categorize the phenomena of legitimacy in one of the Weber ideal types: traditional, charismatic and rational legitimacy. However, it has been pointed out that this typology is less useful for analysis of the contemporary world, since today most political regimes should be classified as the rational-legal type (Dogan 2010). This critical remark seems less justified when talking about Latin America, a region where the weakening of traditional parties has been accompanied by the increasing personalization of politics (Cheresky 2010).

Rosanvallon (2009) also pointed out that in contemporary societies, where elections have become less central, new ways to approach the idea of general interest and novel forms of legitimacy have arisen. He calls these types legitimacy of impartiality, legitimacy of reflexivity, and legitimacy of proximity; all three are defined by the qualities of the bond among rulers and subjects. Hence, these new forms are never definitively acquired. They always remain open to challenge, dependent on social perceptions of institutional behavior, and authorities face the need for continual re-legitimation.

The relational perspective is the main Weberian legacy still present today in this field of research. As noted by Lembcke (2008), it has been adopted by those who choose a top-down approach and who concentrate on describing the efforts of the institutions to gain acceptance for their claims of legitimacy.

On the other hand, a bottom-up perspective is taken by those who focus on citizens' subjective convictions. In this case, attention is directed to the motives of assent to the demands of power. The present project adopts this perspective, which enables us to make

empirical statements about the extent of approval regarding a specific system of domination, and its dynamic processes of transformation.

Empirical analysis of judicial legitimacy is generally grounded on the concept of diffuse support, developed by Easton, who refers to “a reservoir of favorable attitudes or good will that helps members to accept or tolerate outputs to which they are opposed or the effects of which they see as damaging to their wants” (Easton 1965: 273). Specific support is related to consent with particular decisions. But authorities would be fragile if there were only such agreements, since decision making involves favoring some and disfavoring others. Authorities survive thanks to a cushion of general support, not linked to particular outcomes, which allows them to exercise discretion.

Diffuse support means that some people have confidence in institutions to make, in the long run, desirable public policy. Applied to the study of judicial legitimacy, this notion has been conceptualized as institutional loyalty, which helps citizens tolerate outputs that they are opposed to, without necessarily undermining their basic commitment to supporting the institution (J. L. Gibson, Caldeira, & Spence, 2005, Gibson, 2007). This notion is also employed in the present project.

3. Trust in Justice: Methodological Issues

In Latin America, empirical research on institutional legitimacy generally uses survey data from Gallup or Latinobarometer. Both sources are appropriate for comparative analysis in the region, since they include common questions about trust in different institutions⁴. Survey data are especially useful to develop a cross-national, regional perspective, as well as to describe trends in legitimacy levels along a period. The Latinobarometer project, inaugurated in 1995, provides annual surveys in 18 countries, analyzing mass support for democracy and confidence levels in different institutions. In Argentina, Turner and

⁴The wording of the question is: *Please look at this card and tell me how much confidence you have in each of the following groups, institutions or persons mentioned on the list: a lot, some, a little or no confidence? The Congress, the Judiciary, political parties, the Church, the armed forces, etc.*

Carballo (2009) have published trust data obtained by Gallup in different years, starting in 1984.

Power and Cyr (2009) have observed that the reliability of an institution is reflected not only by what individuals say, but also by what they do or are willing to do in connection with it. In their view, an adequate operationalization of legitimacy should encompass both attitudes (such as trust in institutions) and behavior (measures of compliance, for instance). Their remark is particularly relevant in a country such as Argentina, where low trust in the judiciary is accompanied by considerable litigation rates (Smulovitz 2008).

The Justice Reliability Index, elaborated for Argentina by Di Tella University, follows this methodological approach. It is designed to perceive possible behaviors facing different concrete legal conflicts as well as general views of Argentine Justice⁵. In the series - initiated in 2004 – higher scores are observed in the behavioral sub-index than in the perceptual sub-index.

The present project, oriented towards analyzing changes in judicial legitimacy throughout a longer period of time, has used only attitudinal indicators in order to maintain data comparability. Two different measures of trust in justice were included in the research. The first one focuses on judges as persons, and may be easier to answer by common citizens (*Do you believe that a judge inspires confidence and the sensation of being protected? Alternative answers: a lot, some, little or no*). The second is the traditional question about trust in institutions, employed in cross-national research, as mentioned above.

Data were obtained in two public opinion studies, conducted in the city of Córdoba in 1993 and 2011. The first survey (400 respondents) measured the trust in magistrates as persons, as well as opinions on the independence, impartiality, honesty and efficiency of judges. The second study (434 respondents) included the same questions, and added a measure of trust in the judiciary as an institution. In the study, it is possible to observe that the correlation

⁵ As they explain, “The Index is devised as a combination of two sub indexes. The first one relates to the behavior individuals say would have when dealing with concrete legal conflicts in patrimonial, familiar or labor matters, when it is possible to go, or not, to Court (Behavioral sub index) whereas the second sub index measures the individuals belief on Justice in terms of impartiality, efficiency and honesty (Perceptual sub index).” For more details see:

http://www.utdt.edu/ver_contenido.php?id_contenido=521&id_item_menu=1601

between confidence in judges as persons and in the judiciary as an institution is considerable (Correlation R of Pearson 0.443 significant when $p < 0.000$).

Survey data from the Latinobarometer series (1995-2011) were also used to compare the situation in Argentina to other countries in the region.

4. Trust in Justice in Argentina

The revision of public opinion data for Argentina indicates that the legitimacy of the most basic political institutions, including the judiciary, is quite low. Latinobarometer data report that only one out of three citizens (34.5%) showed much or some confidence in the courts in 2010.

International comparisons may be instructive here. Average confidence levels in the European Union were 47% for the same year (See Table 1). Differences among countries were pronounced. In the German-Scandinavian area more than 60% of those interviewed had confidence in the judiciary; the values were also high in the United Kingdom. Trust in the judiciary is lower in countries where democracy is relatively recent, such as Spain, and in nations that suffer from frequent political crises, such as Italy. The table also shows that new democracies including Latvia and Croatia register levels of trust similar to those found in Argentina.

The connection between confidence in justice and democracy strength can also be observed the Latin American data⁶. While in Europe nearly a half of the population expresses confidence in the courts, the regional average in Latin American is just 32%. In this region, countries where democracy has been more stable, like Uruguay or Costa Rica, exceed the regional mean. It is interesting to observe that Brazil – where lay participation in judicial decisions was introduced as early as 1822 (Amietta 2010) – presents confidence levels which are quite higher.

⁶ For a detailed discussion of the relationship between legitimacy levels and democratic experience in Latin America, see Power and Cyr, 2009.

The table also allows us to observe that legitimacy levels are higher in societies with more advanced levels of human development, a feature carefully documented by Power and Cyr (2010), who have mapped legitimacy levels in Latin America. This is not surprising, since the prestige of political institutions increases as those institutions produce positive economic results for citizens over long periods.

Table 1 – Confidence in the Judiciary, 2010

<i>Latin America</i>	<i>N</i>	<i>A lot/some confidence</i>	<i>Little/no Confidence</i>	<i>Don't know/ No answer</i>
Uruguay	1200 (100%)	58.1	38.5	3.4
Brazil	1204 (100%)	51.1	45.4	3.6
Costa Rica	1000 (100%)	46	49.9	4.1
Venezuela	1200 (100%)	37.8	58.1	4.1
Chile	1200 (100%)	36.9	61.5	1.6
Argentina	1200 (100%)	34.5	63.6	2
Colombia	1200 (100%)	34	59.4	6.6
Panama	1000 (100%)	33.6	61.3	5.1
Mexico	1200 (100%)	27.5	67.7	4.8
Paraguay	1200 (100%)	27	69.8	3.3
Bolivia	1200 (100%)	23.5	68.3	8.2
Peru	1200 (100%)	14.7	82.7	2.6
Total	22,695 (100%)	32.4	63.2	4.3
<i>Europe</i>		<i>A lot/some confidence</i>	<i>Little/no Confidence</i>	<i>Don't know/ No answer</i>
Denmark	1007 (100%)	84%	14%	2%
Sweden	1050 (100%)	73%	25%	2%
Austria	1000 (100%)	71%	26%	3%
Germany	1515 (100%)	60%	34%	6%
United Kingdom	1316 (100%)	50%	45%	5%
France	1020 (100%)	45%	50%	5%
Spain	1006 (100%)	44%	51%	5%
Italy	1028 (100%)	42%	52%	6%
Latvia	1003 (100%)	36%	54%	10%
Croacia	1000 (100%)	20%	76%	4%
European Union	26,641 (100%)	47%	48%	5%
Source: For Latin America, Latinobarometer (www.latinobarometro.org). European data from Eurobarometer, http://ec.europa.eu/public_opinion/index_en.htm).				

These data show that the values of confidence in the judiciary in Argentina are close to the regional average. They are rather higher than the values found in countries with significant ethnic inequalities, such as Peru, Bolivia or Mexico, where the competition between the formal legal system and indigenous legal institutions weakens the confidence in state institutions (Power and Cyr 2010). This revision also suggests that different factors, such as

democracy strength, the ability of political institutions to respond to socio-economic popular demands and ethnic inequalities, may influence levels of legitimacy on the judiciary.

Data records of legitimacy of the judiciary in Argentina have shown considerable variation since the end of the military dictatorship. Analyzing changes in institutional legitimacy levels between 1984 and 2006, Turner and Carballo (2010) pointed out the precipitate drop in the prestige of the judiciary since the restoration of democracy. Using Gallup data, they reported that confidence in the legal system was 58% in 1984, just after the civilian government returned, in an atmosphere of high expectations in regard to the possibilities offered by the rule of law. Fifteen years later, in 1999, this value had fallen to 20%. Their study indicates that low legitimacy levels affect not only the judiciary, but the executive and the legislative as well. This fits with the economic experience of the country during this period, where low economic growth profoundly frustrated the expectations of prosperity held by common citizens.

Table 2 – Confidence in the Judiciary – Argentina, 1995 -2010

<i>Year</i>	<i>N</i>	<i>A lot/some confidence</i>	<i>Little/no confidence</i>	<i>Don't know/ No answer</i>
1995	1200 (100%)	33.6%	62.1%	4.4%
1996	1199 (100%)	23.1%	72.4%	4.5%
1997	1196 (100%)	20.5%	75.1%	4.2%
1998	1264 (100%)	19.6%	78.5%	1.9%
2000	1200 (100%)	27.5%	68%	4.5%
2001	1200 (100%)	20.5%	77%	2.5%
2002	1200 (100%)	8.6%	90.4%	0.9%
2003	1200 (100%)	16.2%	81.2%	2.6%
2004	1200 (100%)	26.2%	72.4%	1.4%
2005	1200 (100%)	26.1%	71.7%	2.3%
2006	1200 (100%)	31.9%	66.9%	1.3%
2007	1200 (100%)	22.7%	74.5%	2.8%
2008	1200 (100%)	24.6%	74.1%	1.3%
2009	1200 (100%)	24.5%	73.3%	2.1%
2010	1200 (100%)	34.5%	63.6%	2%

Source: Latinobarometer (www.latinobarometro.org).

The data collected by the Latinobarometer Project since 1995 allow for the analysis of recent changes in judicial legitimacy. The table illustrates that confidence was moderate at the beginning of the series (33%) and moved to extremely low levels at the peak of the

economic and political crisis in 2002, when less than one out of ten Argentines expressed trust in the judiciary. Later, efforts to recover the prestige of judges included changes in the procedure to fill Supreme Court vacancies, as well as strategies to improve the diffusion of judicial activity⁷. The increase has been relatively quick, and by 2010 the proportion of citizens expressing at least some confidence in the judiciary was roughly the same as in 1995 (34%).

This revision enables us to maintain that, as can be predicted from a relational approach, confidence in the judiciary is a complex variable, which is influenced by diverse factors. Therefore, the following analysis must be considered as an exploratory study of its relationship with lay participation in judicial decision-making.

5. The Experience of Mixed Tribunals in Córdoba

Even though implementation has been recent, trial by jury has deep historical roots in Argentina. Understood as a guarantee against the abuse of state power, trial by jury can be found in drafts proposed during the first Constitutional Assembly, held in 1813, as well as in the Constitutions of 1819 and 1826.⁸ The 1853 National Constitution prescribes trial by jury in article 24, section 12 of article 64, and article 99.⁹ The longstanding presence of trial by jury is a clear indicator of Argentina's profound democratic aspirations, as well as its ample tolerance of the gap between written law and social practices. At present, only the

⁷ See Ruibal (2010) for a description of the efforts to improve the legitimacy of the Supreme Court after the crisis. Moreover, in August 2010 the Supreme Court created the television channel CIJ TV, which airs judicial news.

⁸ See Cavallero and Hendler (1988), Jorge (2004).

⁹ After the 1994 Reform, those articles are 24, 75 section 12, and 118:

Article 24: Congress shall promote the reform of the present legislation in all its branches, and the establishment of trial by jury.

Article 75, Section 12: Congress shall.... enact [the laws] that may be required to establish trial by jury.

Article 118: The trial of all ordinary criminal cases not arising from the right to impeach granted to the House of Deputies shall be decided by jury once this institution is established in the Nation. The trial shall be held in the province where the crime has been committed; but when committed outside the territory of the Nation against public international law, the trial shall be held at such place as Congress may determine by a special law.

Arts. 24; 75, §12; 118; CONSTITUCIÓN NACIONAL (Arg).

province (state) of Córdoba has implemented jury trials as dictated by the National Constitution.¹⁰

Lay participation started in Córdoba in 1998, in the form of a mixed criminal court, composed of three professional judges and two lay citizens — called “escabinos” — to deal with serious criminal cases, but only on request by the defendant, the public prosecutor, or the victim.¹¹ In this mixed tribunal with a lay minority — inspired by the German model (Schoffen) — the verdict is reached jointly by juries and professional judges. This type of citizen participation in judicial decision-making proved to be very limited, with only thirty-three resolved cases from 1998 to 2004.¹² However, it helped pave the way for broader lay participation in future criminal decisions.

In 2004, Law 9182 adopted a mixed tribunal with a lay majority for criminal trials, comprising eight common citizens and three professional judges. The tribunal deliberates and decides jointly by majority vote, addressing questions of both fact and law in cases of aberrant crimes and corruption.¹³ The law was passed during a period of national debate concerning efficient measures to fight insecurity and crime.¹⁴

During the parliamentary debate, it was evident that one of the principal aims of the law was to reconstruct the judiciary’s prestige. In the words of Legislator Cid, informing member for the majority, 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 goal¹⁵.

¹⁰ See Hendler (2008).

¹¹ Ferrer & Grundy (2003).

¹² Bergoglio (2008).

¹³ See Law No. 9182, Nov. 9, 2004, B.O. (Arg.).

¹⁴ For a detailed description of the social and political context of the law, see Bergoglio 2008.

¹⁵ Ferrer and Grundy, 2005.

At that moment, other social actors shared the goal of rebuilding confidence in the judiciary through lay participation in judicial decision-making. The president of the Judges Association, Victor Velez, declared in a press interview at the time of the parliamentary debate: “(lay participation in criminal courts) *is an open door, allowing the entrance of a natural sense of equity and fairness, and the exit of better opinions on how the justice administration works*¹⁶.”

The main resistance to the initiative came from certain sectors of the legal profession, where the fear that lay participation in criminal trials could lead to a tougher penal system helped propel the opposition to jury trials. The resistance to the law was expressed in constitutional objections to the procedure. But the Provincial High Court supported the innovation with determination, rejecting the objections and repeating this attitude in later cases. In this way, despite resistance from the legal profession, the High Court secured the consolidation of the system, which has been operating for seven years¹⁷.

Acceptation of the new system is high among those called to serve on a mixed tribunal. The data from studies on the opinion of the citizens who had acted as jurors, carried out in 2006 and 2010, show that the participation in this experience is evaluated as positive. The surveys also reveal that after the participative experience, the percentage of those who had a good image of criminal justice rose steadily¹⁸.

However, it is important to note that the jurisdiction of the new mixed courts is actually quite limited; therefore, the frequency of the processes with lay participation is low. Between 2005-2010 only 150 cases have been decided following this procedure. This means that twelve hundred common citizens have had the chance to participate in penal decisions during the six year period. The limited scope of lay participation in Córdoba suggests that its effects on the confidence in justice may still be rather weak.

¹⁶ (La Voz del Interior, 7/08/2004, accesible at <http://buscador.lavoz.com.ar/>)

¹⁷ For a detailed analysis of the process of acceptance of this institutional innovation, see Bergoglio (2011).

¹⁸ Andruet, Ferrer y Crocchia (2007) report that the proportion of people with a positive image of the judiciary rose from 44% to 98% after serving as juror. During a second wave of this survey, carried out in 2010, the trend was similar. The positive image of the judiciary was 52% during the pre-test, and reached 97% after the participative experience. This last report can be read at:

<http://www.justiciacordoba.gob.ar/justiciacordoba/indexDetalle.aspx?id=110>).

6. Trust in Justice in Córdoba

Using our survey data, it is possible to compare the changes in confidence in the judiciary between 1993 and 2011, and to analyze some of the variables involved in these modifications. During this eighteen year period, confidence in judges improved slightly (Table 4). Even if the increase of positive answers has been small, negative responses have clearly diminished. The proportion of those who felt little or very little confidence was 53% in 1993, but this figure dropped to 40% by 2011.

Table 4 - Confidence in Judges, 1993-2011

<i>Do you believe that a judge inspires confidence and the sensation of being protected?</i>	<i>Year</i>	
	<i>1993</i>	<i>2011</i>
A lot	3.6%	3.7%
Some	14.5%	16.6%
Fair	28.7%	39.4%
Little	38.1%	23.7%
Very Little	15.2%	16,6%
Total	100.0%	100.0%
Pearson Chi-square = 21,663, significant for $p < .000$ (two sided)		
Source: General population surveys, Cordoba, 1993 and 2011.		

It is important to connect these changes with modifications in the general assessment of different aspects of the judiciary. The set of variables selected for this study included independence from political power, impartiality, as well as equality in the treatment of affairs of common people. Other aspects studied were honesty of the judges - understood as the absence of corruption – and efficiency in their job, in general and with regard to an adequate level of criminal punishment. When reviewing changes in public opinion on these issues, it is important to consider that personal experience with the justice administration has become more frequent during this period. The proportion of people who have been in contact with the courts was 33% in 1993, and reached 45% in 2011.

As Table 6 shows, the views of citizens on the independence of courts from political power have also become less negative¹⁹; the evolution of the perceptions of honesty of judges has

¹⁹ It should be observed that improvement in the image of judicial independence during the 1993-2011 period may be also connected to the changes in the process for appointing judges, which was initiated in 2000 with the creation of the Provincial Council of the Magistracy.

been similar. The assessment of judicial efficiency has also improved. These changes, statistically significant, may be connected to enhanced transparency of judicial activities obtained thanks to lay participation in courts.

In addition, Table 6 reports that the proportion of citizens who believe that the level of criminal punishment is adequate has increased. This satisfaction does not derive from stronger verdicts, since an analysis of sentences handed down by mixed tribunals indicates that this is not the case (Bergoglio y Amietta 2010). This result suggests that lay participation improves the legitimacy of criminal sentences, moderating external criticism to verdicts (Park 2010).

Table 6 – Perceptions of the Judiciary, 1993 - 2011

		<i>Year</i>		<i>Pearson Chi-square</i>
		<i>1993</i>	<i>2011</i>	
Independence of the courts	Very high	5.8%	6.2%	18,19 significant for p <,000
	Rather high	13.7%	19.9%	
	Rather low	32.0%	40.7%	
	Low	48.5%	33.3%	
Total		100.0%	100.0%	
Impartiality in criminal proceedings	Agree	31.9%	30.5%	0, 18 Not significant
	Disagree	68.1%	69.5%	
Total		100.0%	100.0%	
Impartiality in civil proceedings	Agree	20.8%	26.0%	2,95 Not significant
	Disagree	79.2%	74.0%	
Total		100.0%	100.0%	
Equal treatment to all in criminal proceedings	Yes	7.1%	8.3%	0,46 Not significant
	No	92.9%	91.7%	
Total		100.0%	100.0%	
There is enough punishment for crime	Yes	10.0%	15.4%	5,42 significant for p < ,02
	No	90.0%	84.6%	
Total		100.0%	100.0%	
Cases of corruption among judges are	Frequent	23.5%	20.9%	12,17 significant for p <,007
	Occasional	42.5%	33.9%	
	Rare	28.9%	41.4%	
	Never	5.1%	3.8%	
Total		100.0%	100.0%	
Judicial efficiency	Very high/high	16.0%	27.7%	26,39 significant for p <,000
	Fair	62.5%	55.2%	
	Low/ Very low	21.5%	17.1%	
Total		100.0%	100.0%	
Source: General population surveys, Córdoba, 1993 and 2011				

The table indicates that the negative assessment of the ability of judges to perform their tasks without social or economic considerations remains stable. Two thirds of those interviewed doubt the impartiality of judges, both in criminal or civil cases in 2011; the proportion was practically the same in 1993. The negative opinions about fair treatment in criminal courts are even higher: more than 90% believe that judges are sensitive to social and economic pressures, both in 1993 and 2011. These data suggest that special efforts are needed to accomplish the ideals of equality before the law in the contact between citizens and the administration of justice.

Small positive changes in the opinions about the independence and honesty of the judges, the efficiency of courts and the levels of criminal punishment allow us to explain the slight improvement of the confidence in the judiciary in Córdoba during the 1993-2011 period. As Table 7 illustrates, all these dimensions are significantly correlated with trust in justice.

Table 7 – Correlations Between Perceptions of Judges and Confidence in the Judiciary

Variable		1993	2011
A judge inspires confidence	Pearson Correlation	1	1
	Sig. (2-tailed)	.	.
	N	394	434
Independence from political power	Pearson Correlation	.180(**)	.128(*)
	Sig. (2-tailed)	.000	.010
	N	394	401
Impartiality in criminal proceedings	Pearson Correlation	.246(**)	.235(**)
	Sig. (2-tailed)	.000	.000
	N	381	415
Impartiality in civil proceedings	Pearson Correlation	.263(**)	.299(**)
	Sig. (2-tailed)	.000	.000
	N	375	415
Equal treatment to all in criminal proceedings	Pearson Correlation	.233(**)	.192(**)
	Sig. (2-tailed)	.000	.000
	N	391	426
Efficiency of the courts	Pearson Correlation	.370(**)	.356(**)
	Sig. (2-tailed)	.000	.000
	N	372	394
Cases of corruption among judges	Pearson Correlation	-.305(**)	-.324(**)
	Sig. (2-tailed)	.000	.000
	N	309	420
There is enough punishment for crime	Pearson Correlation	.160(**)	.152(**)
	Sig. (2-tailed)	.002	.002
	N	387	416

* Correlation is significant at the 0.05 level (2-tailed).

** Correlation is significant at the 0.01 level (2-tailed).

Data included in Table 7 evidence that the views on the impartiality of judges and their ability to offer equal treatment to citizens – dimensions negatively assessed in both surveys - are also correlated with confidence in the judiciary. This is useful in explaining the modest increase in trust in the judiciary observed in 2011, and offers clues to design policies oriented towards improving the relationship between judges and citizens.

7. Support for Lay Participation

It is interesting to observe to what extent the implementation of mixed tribunals has affected levels of public support for lay participation. The surveys included two questions on this issue; the first one explored the public reaction to the jury system in general terms. The second question asked members of the public to imagine that they had been charged with a criminal offense and to state whether they would prefer to be tried by a lay jury or a professional judge.

A clear preference emerged in the responses to these questions: the majority of the sample supported lay participation and preferred to be tried by a jury. Results for both dates are basically the same (Table 8). Research has shown that a more positive image of juries compared to judges is general in common law countries such as England and Wales, New Zealand, and the United States. Surveys carried out in civil law countries reveal a mixed pattern of findings regarding preferences for a jury (Roberts and Hough 2009).

Table 8 – Changes in Attitudes Towards Lay Participation

		<i>Year</i>		<i>Pearson Chi-square</i>
		<i>1993</i>	<i>2011</i>	
Attitudes towards trial by jury	In favor	58.9%	62.3%	1.43 Not significant
	Neither for nor against	25.3%	21.9%	
	Against	15.8%	15.8%	
Total		100.0%	100.0%	
If you found yourself on trial, you would prefer to be tried by	A judge alone	33.8%	38.0%	1.51 Not significant
	A jury	66.2%	62.0%	
	Total	100.0%	100.0%	

Source: General population surveys, Córdoba, 1993 and 2011.

It is worth noting that the implementation of mixed tribunals has not brought about significant changes in general attitudes towards the jury system. In 2011 there was a slight

increase in positive opinions, which was derived from changes in the neutral group. A careful review of these changes shows that support for lay participation has increased especially among those with low levels of education.

Data included in Table 9 allow us to examine the relationship between attitudes towards jury trials and trust in justice. In 1993, when there was no lay participation in judicial decisions, those who expressed low confidence in the judiciary favored the inclusion of common citizens in the judiciary. This association was statistically significant, and indicated that people having a poor opinion of judges looked favorably at institutional changes oriented towards lay participation.

On the contrary, in 2011, this connection between support for jury trials and lack of confidence in the judiciary has disappeared and the positive opinion about lay participation is similar across groups with different levels of trust in the judicial system. This finding is interesting, as it indicates the progressive acceptance of the new mixed courts among common citizens.

Table 9 – Confidence in the Judiciary and Attitudes Towards Lay Participation

		1993			2011		
		Confidence in the judiciary			Confidence in the judiciary		
		A lot /some	Fair	Little/ very little	A lot /some	Fair	Little/ very little
Attitudes towards trial by jury	In favor	47.0%	55.0%	66.0%	63.6%	59.5%	63.6%
	Neither for nor against	28.8%	29.4%	21.4%	22.7%	22.7%	20.8%
	Against	24.2%	15.6%	12.6%	13.6%	17.8%	15.6%
	Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
	Pearson Correlation	-0,158(**), significant for p < 0.002			0.010, not significant		
If called to serve as a juror	You would look forward to serving on a jury.	--	--	--	60.5%	39.8%	43.6%
	You are unsure whether you would accept.	--	--	--	14.0%	27.7%	16.9%
	You would not serve as a juror.	--	--	--	25.6%	32.5%	39.5%
	Total	--	--	--	100.0%	100.0%	100.0%
	Pearson Correlation				0.115(*), significant for p < 0.018		

* Correlation is significant at the 0.05 level (2-tailed).

** Correlation is significant at the 0.01 level (2-tailed).

This interpretation fits with the fact that those who show higher levels of confidence in the judiciary have a positive response to the prospect of serving on a jury. As seen in Table 9, people who trust in the judicial system are more interested in participating as jurors.

8. Discussion

As explained in the introduction, the relationship between lay participation in judicial decision-making and confidence in the judiciary is complex. Comparative research has pointed out that the claim for popular participation in the administration of justice is more probable in contexts which are characterized by dissatisfaction with judicial performance and by lack of confidence in justice. In the long run, however, we can expect lay participation to have a positive effect of on trust in justice.

There are at least three micro-processes by which this occurs. First, as pointed out by Park (2010) in his analysis of Korea's experience with juries, the very existence of a system for jury trials might reduce external criticism to penal decisions. This result is more likely when jury trials receive widespread media coverage.

Secondly, as Tocqueville observed, the differences in knowledge and technical skills become evident during the interaction between judges and common citizens, which consolidates the prestige of judges. Mixed tribunals, where judges and lay persons share the deliberation process, offer ample opportunities for this type of interaction.

In addition, it is expected that those who have the opportunity to participate in a jury trial will be likely to communicate information about their experience throughout their social networks. If they are satisfied with their experience, and comment on it with other persons, the legitimacy of the whole judicial system can improve.

In Córdoba, mixed tribunals were created in a context characterized by a weak legitimacy of the judicial system. The connection between a lack of confidence in the judiciary and support for lay participation is visible in the survey data collected in 1993, and was also present in 2004, during the parliamentary debate of Law 9182.

Public opinion data collected in 2011, after six years of mixed tribunals, show an improvement of confidence in the judiciary; the modifications are small but statistically significant. To interpret these changes, it is necessary to determine if the micro-processes explaining the link between lay participation and the legitimation of the judiciary are also present.

In Córdoba, media coverage of cases tried by the new mixed tribunals has been intense²⁰, so one can expect, as Park hypothesized, a reduction in the external criticism to criminal sentences. Accordingly, 2011 survey data show greater satisfaction with criminal punishment, as described above.

Qualitative studies on the experience of mixed tribunals have reported that the interactions between judges and jurors in Córdoba are frequently framed as a teaching relationship, where judges are always available to assist common citizens with their knowledge and to answer questions²¹. These practices are suitable for rebuilding the prestige of judges.

In addition, those who have served as jurors are satisfied with the experience, and their opinion about the administration of justice has improved, as the surveys conducted in 2006 and 2011 show²².

Given these favorable conditions, it must be asked why the impact of lay participation on the confidence in justice is still rather modest. It is necessary to take into consideration that the experience in Córdoba with mixed tribunals is quite limited: in a six year period only 150 cases have been tried with the presence of common citizens serving among the decision-makers. Even if the experience is positively assessed, the number of persons spreading favorable commentaries throughout social networks is low²³.

²⁰ The primary local newspaper, *La Voz del Interior*, published 162 articles about jury trials in 2007. In small towns, jurors interviewed for this project complained about the intensity of media coverage (Bergoglio 2011).

²¹ See Bergoglio and Amietta 2010, Amietta 2011.

²² See references in footnote 18.

²³ International comparisons about the number of summons delivered per year are useful here. Park (2010) estimates that 2,000,000 summons are mailed each year in the United States, this means 1 per 154 persons. In Córdoba 4822 summons were delivered in 2009, that is, 1 per 686 inhabitants.

It is also necessary to remember that the Córdoba experience with mixed tribunals has taken place in a period characterized by a positive trend in confidence in the judiciary at a national level (see Table 4). However, a recent comparison of the image of administration of justice in different provinces (states), found that positive opinions are slightly more frequent in Córdoba than in the rest of the country, where lay participation in judicial decisions has not been implemented²⁴.

This analysis suggests that the participation of common citizens in judicial decision making could benefit the confidence in judges in the long term, as has been suggested by previous socio-legal research. Therefore, we can expect in the future that the consolidation of the experience of mixed tribunals in Córdoba will contribute decisively to the legitimation of the judiciary.

²⁴ The study was done in 2011 by Universidad Siglo 21. They found that 16% of the Córdoba sample believed that the judicial system is working well or very well; the same proportion was 12% for the whole nation. More details at <http://www.21.edu.ar/institucional-investigacion-proyectos.html>.

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