



# Does introducing lay people in criminal courts affect judicial decisions? Evidence from French reform

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## ABSTRACT

What is the effect of introducing jury members in criminal courts? While surveys regularly point out a demand by citizens for harsher punishment, the differences between surveys' and real decisions' conditions are large enough to cast a doubt on the results. The introduction of two jurors into a court composed of three professional judges in two French regions and for a subsample of crimes during sixteen months offers a good natural experiment. Difference-in-differences or triple-difference methods do not permit me to identify any major change in the probability of being convicted or in sentences given by a court including jurors. If some characteristics of the reform could partly explain those null results, they clearly go against the hypothesis of a major disagreement between professional judges and citizens when they have to make real decisions in criminal cases.

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## 1. Introduction

Numerous countries all over the world include juries in their criminal procedures. While common in Western Europe and North America, juries have also been recently (re)introduced in several countries like Japan<sup>1</sup> or South Korea.<sup>2</sup> Juries are frequently used in the judgment of the most severe cases. However, they can also be associated with judicial proceedings (in the United States) or decisions on sentence enforcement (Belgium, Italy).<sup>3</sup> Regarding trial decisions, jurors can decide convictions (England, United States) or both conviction and sentence (France, Germany, Italy).

The presence of jurors is usually justified by the need to connect judicial decisions and the evolution of society's perceptions. In particular, jurors tend to avoid judicial decisions to be "captured" by professional judges only—a group that has specific socioeconomic characteristics. Additionally, jurors are supposed to increase courts' legitimacy. For this reason, before 2000 in France, judicial decisions

made by juries could not be appealed because they were supposed to be the direct reflection of citizens' will.<sup>4</sup>

Another justification of the presence of jurors in court is to increase society's understanding of the criminal justice system. Jurors obtain a personal experience of justice and, through discussion with friends and relatives, spread some form of knowledge that legitimates the institution.

While those arguments could be viewed as convincing, their empirical foundations have rarely been documented. Two main questions could be formulated. First, do courts including jury members take decisions that are different from courts solely composed of professional judges? Second, is the presence of jurors changing the way citizens perceive the judicial institution?

The media frequently addresses the first of these questions in a particular way. They usually use surveys asking for preferences regarding sentences. Those surveys usually conclude that the majority of citizens strongly desire harsher sentences.<sup>5</sup> The

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<sup>1</sup> <https://www.theguardian.com/world/2009/aug/03/japan-trial-by-jury-returns>.

<sup>2</sup> <http://www.nytimes.com/2008/07/07/world/asia/07iht-jury.2.14299454.html>.

<sup>3</sup> Some comparative law elements on jurors can be found at: <http://www.senat.fr/leg/etudes-impact/pjl10-438-ei/pjl10-438-ei.html> (in French).

<sup>4</sup> This was modified by a law passed in June 2000. Those decisions can now be appealed.

<sup>5</sup> This is, for example, the case in a survey realized in France in 2013. According to this survey, 76% of the people think that sentences should be harsher. See <http://www.lefigaro.fr/actualite-france/2013/03/21/01016-20130321ARTFIG00366-les-francais-pour-une-justice-plus-severe-selon-un-sondage.php> (in French). See also another survey published in French newspapers:

demand for harshness seems to be perceived by judges, as their sentences increase when the media closely follow their decisions (Lim et al., 2015). However, the fact that people ask for harsher sentences in surveys does not necessarily mean that citizens' and professional judges' preferences diverge and that judicial decisions with or without jury members would be different. Indeed, the real conditions of a trial, the court's ceremonial, the study of defendants' lives in addition to their crimes, the importance of a decision that could put a person in jail, the ideal of justice that comes with that responsibility—all of these factors probably make real decisions made by one person differ greatly from what he could express in a survey. Moreover, the experience and authority of professional judges could flatten the eventual differences.

A natural experiment that occurred in France allows documenting more precisely the differences between decisions made by professional judges and jurors. Between January 2012 and April 2013, the jurisdictions of seven counties depending on two appeals courts (Dijon and Toulouse) experimentally modified the composition of their criminal courts in order to include jurors. In practice, two jurors were added to the three professional judges in the judgment of severe violence and severe property offenses. The instigators of the reform—the right-wing government of Nicolas Sarkozy—presented it as a way to move justice closer to the will of the citizens. On the opposite side, a large number of judges saw the law as an act of defiance towards magistrates and a way to increase sentences for the targeted offenses. The opponents clearly perceived jurors as harsher than professional judges.

The way this reform was conducted constituted a perfect natural experiment to evaluate the differences between jurors and professional judges in real decisions. Indeed, only specific place and specific crimes during a limited period of time were affected by the reform. Based on this design, it is possible to use several methodologies to measure the effect of the introduction of jurors: difference in differences among targeted crimes using non-targeted courts as a control group; difference in differences using non-targeted crimes in targeted courts as a control group; and triple differences. Those methodologies allow me to test the assertion of the evaluation report of the reform, issued in February 2013 by the new government and solely based on interviews that stated: “no element allows us to say that the reform induced harsher sentences”.<sup>6</sup>

None of the methods used in this article provide any evidence of a significant change in the judicial decisions following the reform. Neither acquittal, nor the probability of being sentenced to prison, or probation, nor the length of those sentences seem to be affected. Only a small significant effect on suspended prison – minus two days on average – is identified in two over three strategies. While the effect on acquittal could not be precisely estimated, the standard errors of the estimates measuring the effect on sentences are small. Then, the null effects of the reform on sentences could be interpreted as precisely estimated zeros. In addition, the dispersion of the sentences does not seem to be affected. Thus, the effect of the introduction of jurors is, at best, very limited.

The null effect of the reform could have several (non excludable) explanations. The most straightforward one is that judges' and citizens' preferences are identical. However, it is not the only one. It is also possible that the limited number of jury members

included in the court – two jurors in a court already composed of three professional judges – have restricted the capacity of the jurors to participate in the debates and to affect the decisions. This restriction could even have occurred voluntarily if, for example, jurors relied on professional judges because they did not trust their own capacities. It could also occur in a more constrained process if jurors expressed different preferences but were always outvoted by professional judges. Those explanations are hard to disentangle in the institutional setting of the reform. However, the explanation based on the systematic minority position of the juror is hardly convincing. Indeed, this could be the case only if the preferences of professional judges were perfectly homogeneous. If they were not, the expression of divergent preferences of the jurors should have changed the equilibrium that might exist when the professional judges acted alone.

The literature on determinants of judicial decisions is relatively old. A large share of it uses mock juries to test for the effects of procedural characteristics, case characteristics or court composition (see Devine et al., 2001 for a review). Others use experimental design and surveys with fictitious cases (see, e.g., Guthrie et al., 2007, or English et al., 2006). However, the extrapolation of those results to real conditions is difficult (Levitt and List, 2007). This is a common problem for lab studies, but it could be particularly the case regarding judicial decisions. First, decisions are particularly important: they could lead to sending someone to jail for several years. Second, real crimes drive emotions—and even trauma for the most severe crime—in a way that clearly makes them different from fictitious cases and that could distort people's behaviour. Lastly, the ceremonial nature of trials is especially designed to make offenders, witnesses, and experts as well as jurors aware of the importance of the moment. Those conditions could hardly be reconstructed in lab experiments. Then, real decisions and lab experiments could diverge largely.

To overcome those problems, several recent papers studied real judicial decisions. Among them. It is possible to distinguish at least three groups. The first group focused on the cognitive bias of the judges: gambler's fallacy (Chen et al., 2016), mood (Chen, 2014) or tiredness (Danziger et al., 2011). The second group focused on the characteristics of the actors: judges, jurors, defendants, and victims. Those papers studied the importance of race (Anwar et al., 2012a), age (Anwar et al., 2012b), sex (Schanzenbach, 2005; Philippe, 2016), political opinions (Berdejó and Yuchtman, 2013; Anwar et al., 2014), familial structure (Glynn and Sen, 2015), skills (for the lawyer: Abrams and Yoon, 2007). The last group focused on the influence of exogenous events: conflicts (Shayo and Zussman, 2011), media coverage of crime and judicial errors (Philippe and Ouss, 2015), media pressure on judges (Lim et al., 2015).

Those papers documented numerous factors affecting judicial decisions. They usually focused on either professional judges or jurors, and the importance of courts' experience is rarely addressed (see, however, Philippe and Ouss, 2015). This comes from the fact that professional judges and jurors are usually involved in very different courts and that their decisions could hardly be compared (jurors are usually involved in the most severe cases). For this reason, the natural experiment that occurred in France offered a rare occasion to document the alleged differences between professional judges and jurors.

The paper is organized as followed. Section 2 provides an overview of the institutional context. Section 3 presents the data. Section 4 present the empirical strategy and Section 5 the results using the strategies presented. The last section discusses the results and conclusions.

<sup>6</sup> Report to the ministry of Justice on the introduction of jurors in criminal courts in the jurisdiction of Dijon and Toulouse: “We first noticed that the introduction of jurors did not change the precedents in criminal courts. Especially, there is no evidence of harsher sentences. Interviews go in the direction of a null effect or higher leniency due to empathy for the defendants while their personal life has been presented”. [http://www.presse.justice.gouv.fr/art\\_pix/1.1.Rapport\\_bilan\\_experimentation\\_citoyens\\_assesseeurs.pdf](http://www.presse.justice.gouv.fr/art_pix/1.1.Rapport_bilan_experimentation_citoyens_assesseeurs.pdf)

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