

Differential penalization of murder. A sociological examination of the Argentinean case¹.

Martina Lassalle.

Abstract.

Differential administration of punishment is a relevant political and social issue for it is a clear indicator of the criminal system's selectivity. This relevance is even greater when referring to murder: considered the most serious of all crimes, its punishment entails moral concerns to every society. Paradoxically, this problem has not been very much investigated in Argentina and in Latin America in general, even when it is one of the regions with the highest homicide rates of the world. The present article seeks to provide some empirical analyses on differential penalization of murder in contemporary Argentina in order to contribute to this field of study. Using data from the most recent penitentiary census of the country (corresponding to 2018) we examine differential administration of punishment regarding the offender's gender, age, nationality, social class and criminal career. We analyse to what extent these variables impact in the probability of getting lifelong imprisonment and in the length of the sentences imposed by judges. Our study shows that women are more likely to get harsher punishments than men, and that defendants with higher levels of education have been punished more severely than those with no studies at all.

Keywords: Argentina; criminal system; differential penalization; murder; sentences

Universidad de Buenos Aires. Argentina.

E-mail: lassallemartina@gmail.com

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Penalización diferencial del asesinato. Una aproximación sociológica del caso argentino.

Resumen.

La administración diferencial del castigo es una problemática política y social relevante dado que es un claro indicador de la selectividad del sistema penal. Esta relevancia es aún mayor cuando nos referimos al asesinato: considerado el más grave de todos los crímenes, su castigo entraña inquietudes morales a toda sociedad. Paradójicamente, esta problemática ha sido poco investigada en Argentina y en Latinoamérica en general, aun cuando se trata de una región con las tasas de homicidio más altas del mundo. El presente artículo se propone analizar la penalización diferencial del homicidio en Argentina, para así contribuir a este campo de estudios. Utilizando los datos del último censo penitenciario del país, correspondiente al año 2018, examinamos la administración diferencial del castigo en relación al género, la edad, la nacionalidad, la clase social y carrera criminal de los condenados por este delito. Buscamos analizar en qué medida estas variables influyen en la probabilidad de obtener sentencias perpetuas y en el monto de las condenas impuestas por los jueces. Nuestro estudio muestra que las mujeres tienen más probabilidades que los hombres de obtener condenas perpetuas, y que los acusados con estudios secundarios completos han recibido penas más severas que los acusados con niveles educativos más bajos.

Palabras clave: Argentina; asesinato; penalización diferencial; sistema penal; sentencias.

Introduction.

Differential administration of punishment is a relevant political and social issue for it is a clear indicator of the criminal system's selectivity. Many studies have shown that different extralegal factors, such as social class, age, nationality and race, are key to explain this selective functioning (Foucault, 1995; Baratta, 2000; Pavarini, 2003). This relevance is even greater when referring to murder: considered the most serious of all crimes, its punishment entails moral concerns to every society. Altogether with Simon, we may also underline that studying murder punishment is as well crucial since "the law of murder is, in fact, an important device within the substantive law of crime through which the overall scale and severity of punishment can be adjusted" (2011: 1242).

Truly significant both for social scientists and policy makers, murder sentencing has been deeply studied in the United States (many regarding capital punishment), as well as in Western European countries (Johnson, Van Wingerden, & Nieuwbeerta, 2010; Barak et. Al, 2010; Freiburger & Hilinski, 2013; Spohn, 2015; Girgenti, 2015; Kutikoff, 2017; Pierce et. al, 2017;

Holland & Stringer, 2019).

However, and paradoxically, this topic has not been very much investigated in Latin America, one of the most unequal and conflictive regions of the world. This region has very high homicide rates and it is also characterized by recurrent arbitrary penal proceedings towards the most disadvantaged groups of society (Van Groninger, 1980; Cano, 1997; Misse, 2011). As far as we know, studies on differential penalization of murder have been produced only in Brazil and Mexico (Adorno, 1994; Azaola, 1997, 1999; Costa Ribeiro, 1999; Ribeiro, 2010; Núñez Cetina, 2015), and there are only some limited contributions in Argentina (Rodríguez & Chejter, 2014; Gastiazoro, 2015; González Guerra, 2015). The number of studies and the analyses offered show that the field of sentencing is still scarcely developed in this region. One of the main reasons for this vacancy is that there is not much data available to be analysed in these countries. Consequently, the way in which judges and prosecutors administer punishments remains as an obscure zone only (fragmentary) known by the judiciary itself. Carrying out empirical research on this field is then an urgent scientific and political task.

The present article seeks to provide some empirical analyses on differential penalization of murder in contemporary Argentina. Via regression analyses, we will analyse differential administration of punishment regarding the offender's gender, age, nationality, social class and criminal career. We aim to examine to what extent these variables impact in the probability of getting lifelong imprisonment and in the length of the sentences imposed by Argentinean judges. To accomplish these objectives, we will analyse data from the most recent penitentiary census of the country.

Since this field of study is certainly underdeveloped in Argentina, our research turns out to be an important contribution to achieve a general overview of the way in which Argentinean judges punish this crime. Furthermore, as many studies from other regions have shown (Van Wingerden, & Nieuwebeerta, 2010; Girgenti, 2015; Holland & Stringer, 2019) we consider that studying differential penalization of murder from a sociological perspective is truly significant for what this problem ultimately shows is that murders are not all qualified in the same manner. Or, to put it in other words, that, for the penal system, some murders are more criminal (more serious and atrocious) than others. We will try to explore how the variables included in our analysis do (or do not) contribute to describe and explain these different degrees of "criminality" that, in our view, can be read in penal sentences.

In the first section of the article, we present a brief literature review of the main studies on differential penalization of murder from the region. Then, we offer an overview of murder rates in Argentina. In the third section, we first present a methodological subsection in which we describe the dataset with which we will be working as well as the variables included in our analysis. Later, we examine differential penalization of murder in Argentina through cross-tabular and regression analysis. Finally, we draw some conclusions and present new questions for future analyses.

Differential penalization in Latin America: an overview

Paradoxically, differential penalization of murder has not been very much explored in Latin America despite the high homicide rates observed in this region. Mapping and systematizing the most relevant contributions in this field is certainly relevant in a context where this litera-

ture is not only limited, but also disperse.

Actually, differential penalization has not been much studied for other crimes either. Two important but not very recent studies from two Brazilian scholars are worth mentioning. Costa Ribeiro (1995) has done research on sentencing disparities in Rio de Janeiro from 1900 to 1930, including not only homicides but also other crimes. His study focused on analysing whether the skin color of the defendant had any relation to court decisions, and he found out that black people were more often sent to prison than white people. Similarly, Adorno's research (1996) has analysed race biases in judges' sentences for aggravated robbery in Rio de Janeiro during 1990. By comparing white and black defendants prosecuted for this offense, he could see that even though both groups had similar characteristics (in terms of gender, age and social class), black defendants were the ones who got harsher punishments. For instance, among the people acquitted, 27% were white while 15.5% were black.

More recently, Mattos & Monteiro (2013) have analysed penal selectivity as of the characteristics of the Brazilian penal population. In their study, they show that 60% of the prisoners are 30 years old or younger, 77% do not have education and 60% are black. Similarly, but for Argentina, Rodriguez Alzueta's research (2012) points out that half of the Argentinean penal population was not employed when arrested, 70% were not older than 35 years old and 96% were men. In both analyses, age and social class are key extralegal factors that seem to explain penal selectivity.

In Argentina, most studies on the judiciary have been qualitative studies which aimed to characterize judges' culture (Sarabayrouse, 2011; Gutiérrez, 2013), rather than their sentencing practices. However, we can mention an article from Lista et. al (2011) which has analysed the objective (regarding the offence) and subjective (regarding the offender) elements that came into play in judiciary decisions with regard to aggravated robbery in the province of Córdoba during 2008. The elements more often considered in these sentences were the age and criminal history of the defendant (85%), the nature of the action (54%), the education and weekly income of the offender (50%), the extension of harm (47%) and the means employed (44%) to commit the offense. Although the study addresses that all the objective elements were used for aggravation while others such as weekly income, education and age were used as mitigating factors, it does not show to what extent this occurred.

Sentencing murder

Regarding murder, we find relevant but only a few investigations in Brazil, Mexico and Argentina. Unlike what studies in the US and Western Europe (Freiburger & Hilinski, 2013; Arnaud, 2017; Kutikoff, 2017) have shown, Azaola's (1997) research on women sentenced to prison for murder in Mexico City during 1994 has demonstrated that they were given about 25% harsher punishment than men. This difference, seen when comparing the total amount of murders committed by men and women, kept the same when considering only the so-called domestic homicides committed by each group. The investigation carried out in Mexico City was later also extended to another region: the city of Pachuca in the State of Hidalgo (Azaola, 1999). This study, which focuses on the period January 1995-February 1996, presented similar results: although there were not many women sentenced to prison for homicide as in Mexico City (Pachuca is less populated), the gender-gap could also be verified as they had received 15%

harsher punishments than men.

During the '90s, Adorno (1994) and Costa Ribeiro (1999) have also investigated sentencing disparities in crimes against life in Brazil, and they have both focused on how different elements biased juries' decisions to imprison or to acquit defendants. Adorno's work compares social profiles of the defendants condemned and of the defendants acquitted in one court of San Pablo during the period January 1984-June 1988, in order to identify extralegal factors intervening on those decisions. His research shows that black people were overrepresented among the defendants who were condemned, but also among those who were acquitted. In this sense, he concludes that race is an element that explains social control (and detentions) rather than sentencing decisions (Adorno, 1994). Adorno also analyses occupation and residence of the defendants. He shows that among Northeastern people living in San Pablo, the percentage of convicts was, in average, much higher than for residents who were born in the city itself. Finally, concerning occupation, Adorno's results show that the greatest proportion of the people condemned corresponds to defendants who were employed in the 'informal market'. Like black people and residents coming from the Northeast, individuals with precarious employment situations were overrepresented among convicts, even considering that they were a minority in San Pablo.

Costa Ribeiro's work has focused on how juries' decisions were biased in Rio de Janeiro during 1993. His analyses show that, among the extralegal elements considered (race of the defendant and the victim), the race of the victim was the most significant to explain biases in juries' decisions: offenders were twice likely to be convicted when victims were white than when they were 'black' or 'brown'. Results also indicate that defendants with prior detentions were more likely to be convicted than defendants with non-prior detentions. However, Costa Ribeiro's research indicates that the variable that most increased the possibilities of conviction was a procedural one: the chances of conviction were twice higher when there was a prosecution assistant than when there was not. Costa Ribeiro concludes that if the role of the prosecution assistant was so relevant, it was because she makes efficient use of available legal resources and cultural schemes.

Also in San Pablo, Ribeiro (2010) has investigated the incidence of the race, age, gender, and education of the defendants accused of murder in what they call 'the flow of the criminal justice system' (that is, the transition through the different instances of the criminal system) from 1991 to 1998. Through regression analyses, Ribeiro shows that, even though these factors came into play differently in each instance of the process (prosecution, imputation, sentencing), age and race had incidence in all of them. Hence, black youths were more likely to run all over the complete criminal process. These findings seem to confirm what Adorno (1994) had identified for the previous decade. However, although young black men with lower education levels had more possibilities of being prosecuted, women had more chances of being sentenced for homicide than men. Results also show that education levels had no incidence in the prosecution and sentencing instances.

More recently, Núñez Cetina (2015) has investigated the arguments and outcomes of sentences for the so-called 'passionate homicides' in Mexico City during the period 1929-1971. 5% of these cases corresponded to homicides committed by women and they were all typified as aggravated homicides and punished with more than 10 years of imprisonment. In contrast, among homicides committed by men, 60% were considered homicides "in defence of honour"

and given between 2 and 8 years of imprisonment; 30% were considered homicides committed under violent emotion, and the rest were acquitted. Therefore, Núñez Cetina's study shows the same pattern observed in Azaola's works for the '90s.

In Argentina, Rodríguez and Chejter (2014) have analysed the judicial treatment given to women and men accused of intimate partner homicides during the '90s and the first decade of 2000 in courts from Buenos Aires City, San Isidro and Neuquén. Their research included an analysis of the arguments found in the sentences and concluded that mitigating factors were less likely to be used by the judge when the author of the homicide was a woman. This trend was also seen in cases of attempted homicides: when the author was a man, he was more likely to be condemned for "criminal injury" than for the crime of "attempted homicide" itself. For instance, among ten attempted homicides committed by men, only one was considered as aggravated. In contrast, in women's cases, half of the attempted homicides committed were understood as aggravated.

The report on the characteristics of the population detained for homicide in Argentina up to December 2015, which was elaborated by the National Direction of Criminal Politics (González Guerra, 2015), is in line with Rodríguez and Chejter's findings. Although this report is not specifically focused on disparity in sentencing, it shows that women are punished harsher than men. Among all women condemned for murder, 38% received lifelong imprisonment while, among men, this percentage is 19%. This was also verified by Lassalle (2018) who analysed not only sentencing but also detention practices up to the year 2016.

Gastiazoro (2015) has also studied arguments provided by judges and juries regarding infanticide cases in Córdoba from 2006 to 2013. Her research shows that the defendants' social class was an important factor in judges' decisions. She observed that all the women sentenced to prison were divorced from their husbands, and that 3 out of the 4 women acquitted belonged to middle and high social strata. Gastiazoro's study also highlights that 1 of the 3 women imprisoned was from a middle class, and that she was the only one to have a later reduction in the sentence length.

Even when sentencing practices with regard to murder have not been deeply investigated in Latin America yet, we can say that these contributions highlight quite relevant patterns in these practices. Firstly, that women have received longer sentences than men. This was identified in Mexico, in Brazil as well as in some Argentinean districts. Secondly, that lower social classes are more pursued by the criminal system, and also more severely punished, than higher social strata (this was seen not only in murder cases but also for other crimes). Race was also a key variable when analysing the decisions of the criminal justice, but specifically in Brazil.

In what follows, we will explore how some extralegal factors come into play in Argentinean sentencing practices with regards to murder. These analyses seek to provide an overview of the whole country as well as to contribute with recent data to the understanding the Latin American context.

Murder in contemporary Argentina

Although Latin America has truly high homicide rates if we compare them with other regions of the world, Argentina presents peculiar characteristics at this respect. Altogether with Ecuador and Chile (5.69 and 3.5 homicides every 100,000 people respectively), it has one of the lowest rates of the region: 5.1 homicides every 100,000 people, a number that has been

decreasing during the last decade. It is a certainly low rate compared to other countries of the region such as Brazil (31.6), Colombia (25.9), or Mexico (29). However, and even though it is a low rate for the region, there are some areas where murders are more frequent. For instance, while some provinces such as La Pampa and La Rioja have rates of about 1.2 homicides every 100,000 inhabitants, in others such as Chubut this rate is of around 8. As well, Rosario and Santa Fe city are areas with rates over the averages: around 13 homicides every 100,000 people. Capital Federal and Buenos Aires province have in average about 5 homicides every 100,000 people, but it is also worth mentioning that, in this province, there are some districts with higher levels such as Moreno and Lomas de Zamora (about 10 and 9 homicides every 100,000 people, respectively) (SNIC, 2019).

As in other Latin American countries, homicides in Argentina are mainly the result of interpersonal conflicts, and many of them occur among people who already knew each other. Also, around 75% of the offenders who committed homicide had not committed other crimes before. Homicide as a result of robbery represents about 13%.

The Argentinean law of murder.

According to the Argentinean criminal code, intentional homicides are to be punished with between 8 and 25 years of imprisonment—in this scale, the minimum corresponds to homicides with no aggravating factors and the maximum corresponds to homicides committed during an assault, for example. Although 25 years of imprisonment is the maximum in the scale, judges can also impose life sentences for aggravated homicides. Some of the factors that aggravate homicides are: a) murdering the ancestor, offspring or (ex) partner; b) murdering for a reward; c) murdering because of hate concerning race, religion, gender, or sexual choice; d) murdering a woman when the action is committed by a man and there is gender-based violence. In Argentina, lifelong imprisonment implies that the defendant cannot request for conditional release before completing 35 years of effective incarceration. For the rest of the crimes, and even also for non-aggravated homicides, conditional release can be requested after completing two-thirds of the sentence.

The organization of Argentinean judiciary responds to the country's federal character. Thus, there exists, on the one hand, a Federal Justice with jurisdiction all over the country that oversees crimes such as drug dealing, money laundering, tax evasion and others affecting national security. On the other hand, there is a Provincial Justice (also called Ordinary Justice) which deals with 'ordinary crimes', and which has its own organs and procedural legislation. Homicide is then investigated and judged by provincial courts.

Although jury trials for criminal cases—particularly for serious crimes whose minimum punishment is of 8 years of imprisonment (aggravated homicides and rapes, for example)—are mentioned in the Argentinean National Constitution, the National Congress has not passed a law to regulate them so that they can be put into practice in the whole country. However, some provinces have individually passed their own provincial laws and they are starting to implement these types of trials. In them, juries decide on the innocence or guilt of the defendant and the judge determines the sentence length in case she is found guilty. In provinces such as Córdoba, Neuquén and Buenos Aires, jury trials have already been implemented, and in Río Negro, Chaco, Mendoza and San Juan, the law has been approved but it is not implemented yet. Anyway, and even though things are starting to change, it can be said that the great major-

riety of the trials for intentional homicide in Argentina are still carried out without juries and, hence, it is the judge who works out the complete decision.

Differential penalization of murder in Argentina

Methodology

Regarding our research objectives, the current paper uses data from the most recent penitentiary census (information up to December 2018), which is yearly systematized by the National Statistical System on Punishment Execution. This dataset gathers information about all the people detained in penitentiary units of the country, and it is the only data available about defendants and sentences for the whole country. The data includes information on the defendants' gender, age, nationality, education level, last employment situation and criminal career; on their legal situation (the sentence type and length, the date of detention and sentencing), and on the type of offense committed (robbery, rape, intentional homicide, manslaughter, etc.). This information is available for the 94,884 people who were detained up to December 31st, 2018. Given our research objectives, we will work with the 7,721 cases that correspond to the offenders condemned for intentional homicide.

In order to analyse the extent to which the age of detention, gender, nationality, level of education, last employment situation and criminal career of the defendants explain disparities in sentencing, we employ cross-tabular analyses as well as regression models. To measure these disparities, we first consider the proportion of lifelong sentences among the offenders. We work with a dichotomous dependent variable, being its two categories whether the defendant has been sentenced to lifelong imprisonment or not. Secondly, we consider the length of the sentences imposed. This quantitative variable measures the sentence length in years of imprisonment.

All the explanatory variables are included in the cross-tabular analyses as dichotomous variables: the defendants' gender (Male/Female), age of detention (between 18-35 years old/36 years old or older), nationality (Argentinean/Latin American), level of education (complete secondary school/complete primary school or no education), last employment situation (part-time or full-time worker/not employed), and criminal career (with non-prior detentions/with prior detentions). For the regression analyses, these variables are introduced in the models as dummies, and coded as follows: '1' when the defendant's gender is female; '1' if she was detained being 36 years old or older; '1' if her nationality is Argentinean; '1' if she has only primary school completed or no education at all; '1' if she was not employed; and '1' if she had prior detentions.

Describing differential penalization of murder

In Argentina, there are 12,419 people detained for murder. 62% of them are condemned while the rest is under pretrial detention. The average of the length of the sentences executed for this crime is 16.6 years of imprisonment, and 17% of these sentences are lifelong ones. If we exclude the population with lifelong punishments, the average of the length of the convictions decreases to 12.3 years—that is, the great majority of the defendants (83%), has been punished, in average, with 12.3 years of imprisonment.

Table 1 shows the characteristics of the defendants condemned for this crime. As displayed,

most of them are men who were detained being less than 36 years old. Their level of education as well as their last employment situation indicate that most of them are from low socioeconomic sectors. Only 12% has completed secondary studies and almost half of them did not have a job when they were detained. It is also worth highlighting that, among the ones who were employed, about 75% had part-time (probably informal) jobs. Most of the defendants are locals, and only 3% of them have other Latin American nationalities. When considering the defendants' criminal careers, one can see that 75% of them was not imprisoned before.

Table 1: General characteristics of the defendants condemned for murder

Population convicted for murder N= 7721		
	%	N
Male	96.1 %	7423
Detained being between 18-35 years old	77%	5945
Argentinean	96.7%	7470
Latin American	3.1%	240
Complete secondary school	12%	927
Part- or Full-time job	55%*	4273
Non-prior detentions	75%	5771

* Only a 25% of them were full-time employed, which indicates that the great majority of the convicted population did not have a job or were employed in the informal sector when detained.

In Table 2 we observe the percentage of lifelong sentences for each subgroup. As shown, this percentage among women is significantly higher than among men: 36.6% for the former and 17% for the latter. Results also show that there are 32% of lifelong sentences among offenders who had completed secondary school studies while this proportion is of 16% for people with only primary school studies or with no education at all. Regarding the defendants' last employment situation, the table shows that the ones being partly or fully employed were given 3.8% more lifelong sentences than the defendants who did not have a job when they were detained. A similar difference is also verified when considering the age of detention: defendants detained being older than 35 years old have received 3.2% more lifelong sentences than younger ones. Although Latin American offenders have received more lifelong sentences than locals, differences are not very much strong. As well, there are no significant differences among defendants with prior detentions and defendants without them.

Table 2 also shows the means in the length of the sentences (in years) both for defendants with non-lifelong punishments and for the complete population. Results show that there are not significant differences among the different subgroups when we examine temporary punishments: around 12.3 years of imprisonment for all of them. Some differences can be seen when comparing Argentinean and Latin American defendants: the latter group has received, in average, sentences 1.7 years shorter than the former. As well, sentences are about 1 year longer for defendants with prior detentions. Convictions are also 1 year longer for offenders with complete secondary school studies than for offenders with lower levels of education.

When considering the whole population, the strongest differences can be seen when comparing men with women, and groups with different levels of education. In average, women have received about 4 more years of prison than men. Sentences for defendants with complete secondary school have been 4 years longer than for offenders with lower levels of education. This trend is in line with what we have previously observed regarding the amount of lifelong sentences for each subgroup. Table 2 also shows that sentences for older offenders and for locals have been of about 1 year longer. When examining the defendants' last employment situation and criminal career, we can see there are no significant differences among the subgroups.

Table 2: % of lifelong sentences and sentence length per subgroup

	% of lifelong sentences N= 1327	Sentence length (in years) for population with no lifelong sentences	Sentence length (in years) for the complete population
Male	18 %	12.4 years	16.4 years
Female	37 %	12.5 years	20.5 years
Detained being between 18-35 years old	18.8%	12.4 years	16.8 years
Detained being 36 years old or older	22%	12.2 years	18 years
Argentinean	18.5%	12.4 years	16.6 years
Latin American	19.8%	10.7 years	15.7 years
Complete secondary school	32%	13.3 years	20.3 years
Complete primary school or no education	16%	12 years	15.9 years
Part- or Full-time job	19%	12.3 years	16.8 years
Not employed	16.8%	12.1 years	16.1 years
Non-prior detentions	19%	12 years	16.5 years
Prior detentions	18.5%	13 years	17.1 years

Our regression analyses enable us to examine the impact of our independent variables in the sentence length (OLS regression) and in the probability of getting lifelong imprisonment (logistic regression).

Table 3 shows that the defendants' age of detention, nationality and criminal career do not

have impact in the probability of getting lifelong imprisonment. However, we can see that the defendants' gender, level of education and last employment situation do influence punishment behavior. Female offenders have almost 2.9 times higher risk of getting lifelong imprisonment than male offenders. As well, our analyses point out that non-employed offenders have around 0.7 times less risk of getting this type of sentences than defendants who had part- or full-time jobs. Results also report that offenders with lower education levels have 0.6 times less risk of being punished with lifelong imprisonment than offenders with higher levels of education.

When examining the length of the sentences for the whole population condemned, results show that female offenders' sentences are 3.7 years longer than male offenders' ones. We can also see that convictions for defendants with primary school studies or with no education at all are 2.8 years shorter than for offenders with higher education levels. Something similar can be said when considering the defendants' last employment situation: sentences are 1.45 years longer for offenders who had part- or full-time jobs. The impacts of the defendant's age of detention, criminal career and nationality on this dependent variable—which were previously observed in our cross-tabular analyses—disappeared when introducing our regression model.

If we consider the population with non-lifelong convictions, results show that the offenders' gender does no longer bias the sentence length. The defendants' age of detention does not show to have impact either. As well, table 3 shows that for those with the lowest levels of education sentences were 1.44 years shorter. Regarding the offenders' last employment situation, we can observe that sentences were 0.4 years shorter for the ones who did not have a job. As it can be observed, these differences are less significant than when considering the complete population. Results also report that sentences for Argentinean offenders were 1.2 years longer than for Latin American ones. The defendants' criminal career has a smooth impact on the sentence length which were 0.84 years longer for offenders with prior detentions.

Table 3: Logistic Regressions and OLS-Regressions for the % of lifelong sentences and the sentence length

	Logistic Regression	OLS Regression			
	Lifelong sentences	Sentence length (in years) for population with no lifelong sentences		Sentence length (in years) for the complete population	
	Exp (B)	B	SE	B	SE
Constant	.387	13.601	.276	19.260	.463
Female defendant (=1)	2.999***	-.083	.824*	3.714	.824***
Defendant detained being 36 years old or older (=1)	1.101*	-.213	.204*	.240	.356*
Latin American defendant (=1)	1.199*	-1.204	.488**	-.030	.835*
Defendant with complete primary school or with no education (=1)	.611***	-1.445	.273***	-2.847	.459***
Non-employed defendant (=1)	.714***	-.405	.179**	-1.456	.318***
Defendant with prior detentions (=1)	.900*	.845	.220***	.394	.391*

Abbreviation: SE = Standard Error

*** $p < .01$; ** $p < .05$; * $p < .10$

Understanding differential penalization of murder

The discussion about the criminal system's discretionary functioning (mainly in Latin America) often omits a crucial distinction which seems truly relevant for us. This distinction is related to two different instances or moments: arrest/detention and sentencing. Most of the studies produced in Argentina explore disparities regarding detention (Míguez, 2004; Rodríguez Alzueta, 2012; Kessler & Dimarco, 2013), but not differential administration of punishment. These investigations remark that young men from lower social classes are the most pursued (and stigmatized) by the criminal system. However, as we have seen, even though the age of detention of the defendants can be an explanatory variable regarding detentions (77% of the defendants were detained being under 35 years old), it definitely cannot explain biases in the administration of punishment with respect to murders.

The distinction mentioned seems to be also relevant regarding the defendants' gender. Despite women condemned for murder are a minority in Argentinean prisons (only 4%), they have received harsher punishments than men (when considering lifelong convictions). In this sense, the assertion according to which poor men are the most severe punished because they are stereotyped as dangerous or as undesirable social actors —something asserted by conflict theories (Wacquant, 2010; Fassin, 2018, for instance)— should be revised at least with respect to this crime in Latin America. As we have observed, women have received longer convictions than male defendants —and this tendency was also shown by Azaola (1997, 1999) in Mexico, by Ribeiro (2020) in Brazil and by Rodríguez & Chejter (2014) in some Argentinean cities. If we accept that, through differential penalization of murder, the criminal system ultimately produces different “degrees of criminality”, we may then assert that murders committed by women are, relatively speaking, qualified as “more criminal” than those committed by men. They seem to be “more serious, more atrocious” for the Argentinean criminal system. Unfortunately, the data available does not allow us to provide a deeper explanation of this. Since the information on the type of homicide committed by women and men is not available, we cannot conclude whether harsher punishments are due to the “gender condition” of the defendants in a society where misogynist violence against women is extremely frequent, or to the type of murder committed. However, we strongly consider that our findings are a valuable starting point for further investigations in this line.

Additionally, we have observed a direct relation between the length of the sentences executed and the defendants' level of education. However, this relation is inverse to the one verified concerning just detention. Even though the great majority of the defendants condemned for murder (and this is also valid for the whole penitentiary population) has very low levels of education, they were not the ones receiving the longest convictions for this crime. On the contrary, defendants with higher levels of education have received harsher punishments. A similar but weaker relation could be seen when examining the defendants' last employment situation: lifelong imprisonment is more likely among employed defendants than among non-employed ones, and the averages of the length of the sentences are also slightly higher for the former. Nevertheless, as we have mentioned regarding the defendants' gender, the data available does not allow us to learn why these murders seem more serious for the criminal system. Actually, we cannot learn if the bias that sentencing practices show is explained by the type of homicide committed by these groups, or if they are just made “more responsible” for their acts because of their better social position, for instance.

Let us finally add that the criminal career has shown some impact on the sentences, but only when considering defendants with no lifelong convictions. Article 41 from the Argentinean Criminal Code expresses that recidivism must be considered as an aggravating factor when defining the length of the sentence, and that it also cancels the possibility of getting certain “benefits” such as conditional release. As Foucault (1995, 2003) has explained, this figure was crucial in modern criminal systems because recidivistic behaviour was a clear indicator of dangerousness. Any sign of dangerousness was translated into more severe punishments because these were conceived as methods of normalization for deviated or abnormal subjects. In Foucault’s view, these objectives were accomplished (or intended to be accomplished) through very strict and effective surveillance methods.

However, as many authors have asserted, there has been a transformation in the general technology of power by the mid-seventies: disciplinary societies were replaced by societies of control (Deleuze, 1992) or biopolitical societies (Hardt & Negri, 2000). These profound transformations have naturally impacted on the criminal system’s functioning for it is now immersed in a different diagram of power, with different strategic objectives (different from the ones that were predominant in disciplinary societies). Feeley and Simon (1992), O’Malley (1992) and Garland, (2001) have asserted that the crucial notion with which neoliberal criminal systems work is not dangerousness, but rather risk. Contemporary criminal systems seek to manage risk, in order to manage the crime market (Foucault, 2008), and, in this context, incarceration is employed as a means of neutralization, rather than as a method of re-socialization or normalization. Therefore, we may say that, even when recidivism is still an important legal figure that aggravates punishments, it is now read as an indicator of risk, and not of dangerousness. By imposing longer punishments to offenders with prior detentions, the criminal system removes them from the crime market for a longer period of time.

Conclusion.

The current study has intended to be a contribution to the scarcely developed field of sentencing in Argentina. The brief literature review provided has permitted us to map the most important studies in the region and to identify certain patterns in penal practices. It has also revealed that, even in a region with truly high homicide rates, there are few studies on sentencing practices regarding this crime. Therefore, it seems clear that more empirical investigations are paramount.

Our empirical analysis about Argentina has shown that penalization practices have peculiarities which remain different from detention ones. Hence, certain groups can be more pursued by the criminal system (for example, young poor men) than others, but they are not necessarily the ones punished harsher when they commit murders. Actually, we have seen that the defendants’ gender, level of education and last employment situation are related to the way in which judges administer punishments, but this relation is not the one frequently remarked by other investigations in this field of study.

The information available in the dataset analysed does not allow us to give more comprehensive explanations of the results presented above. Information on the type and circumstances of the murder committed, and on the victim as well, are crucial to provide better characterizations and explanations of differential penalization, in order to develop and strengthen this field of study in Argentina and Latin America. However, even when our findings cannot offer

conclusive answers, we consider they are truly valuable for they point out the importance of studying punishment administration in its own specificity. This will lead us to clearly distinguish sentencing and detention practices and, therefore, it will keep us from generalizing the results of the analyses on detention to the complete functioning of the criminal system.

Furthermore, we consider that this article may officiate as a starting point from where new questions and hypotheses about the way in which the criminal system produces (symbolic) differentiations of murders can arise. Why are certain murders committed by women more “criminal” than those committed by men? How to explain that murders perpetrated by people with very low levels of education are considered less serious than those perpetrated by people with higher levels of education? If murders are not all equally criminal, how to explain these different “degrees of criminality” built by the criminal system? And, more generally speaking, which are the most criminal murders for the Argentinean criminal system? We consider that these questions are crucial for any sociological investigation that aims to study the ways in which the criminal system punishes the crime which is, allegedly, the most criminal of all.

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