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Election Day Referendum To Decide Uruguay’s "Age of Criminal Responsibility"

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When Uruguayans head to the polls this October to choose the country’s next president, they will also vote in a constitutional referendum on whether to lower the age of criminal responsibility.

The referendum stems from a proposal put forth by the right-wing leaders of Uruguay’s two oldest political parties—Pedro Bordaberry of the Partido Colorado (PC) and Luis Alberto Lacalle Pou of the Partido Nacional (PN or Blanco)—who are hoping to lower from 18 to 16 the age at which a suspected criminal can be prosecuted as an adult.

Three years ago, when the idea was first presented, more than 70% of the population supported the change. More recently, the numbers have dipped, presumably because of pressure from the "No a la Baja" campaign that opposes the initiative. Poll results released earlier this month measured support for the reform at 57%, down from 67% in February.

Still, if the election were today, the "yes" option—those who want the age lowered—would likely prevail. Oddly, when it comes to choosing the next president, voters seem to be leaning in the opposite direction. The same polls that predict a "yes" victory in the Oct. 26 referendum favor the progressive Frente Amplio (FA), which is unequivocally in the "no" camp, to retain the presidency (NotiSur, March 7, 2014).

The FA and its "No a la Baja" allies—a group that includes the PIT-CNT (Plenario Intersindical de Trabajadores-Convención Nacional Trabajadores) labor-union federation, various humanitarian and social organizations, and certain isolated lawmakers from the Colorado and Blanco parties—say the "aberrant initiative" could put Uruguay at odds with the UN Convention on the Rights of the Child. It also goes in the face of "international standards that say that lowering the age of criminal responsibility does not resolve problems regarding juvenile criminal justice."

**Dissuading delinquents?**

The proposal is typical of an approach to crime fighting that focuses on stiffening penalties for lawbreakers. The idea, one often espoused by far-right political movements, is that "increased jail sentences offer a kind of social benefit in rehabilitation, dissuasion, and, generally speaking, the inability to commit new crimes," sociologist Nicolás Trajtenberg explained in an April 25 interview with Brecha, an Uruguayan weekly. Trajtenberg said the approach also operates on a symbolic level. "Stiffer penalties let the criminal know that he or she has committed what society considers to be a serious offense."

The problem with that line of thinking, the sociologist explained, is that prisons are not actually effective when it comes to either rehabilitation or effectively preventing the commission of new offenses. "From a moral point of view, one has to say that prisons carry out a type of justice that is questionable, vengeful, brutal, and cruel," Trajtenberg said.
The Inter-American Commission on Human Rights (IACHR), one of the legal bodies operating under the umbrella of the Organization of American States (OAS), reached a similar conclusion after reviewing conditions in Uruguay’s various prisons. On March 28, the IACHR’s former executive secretary Santiago Cantón described the situation in Uruguay as "very serious" and lamented that "human beings are being kept in what are practically sewers." The issue had previously come to the attention of Manfred Nowak, a former UN special rapporteur on torture, who said "conditions in Uruguayan prisons are an insult to the dignity of the inmates."

The constitutional-reform bill—whose fate will be decided by the October referendum—calls for the establishment of a government department tasked exclusively with interning and rehabilitating minors. The proposal does not, however, explain what that rehabilitation would entail. Critics suspect that there is nothing actually new in the proposal.

Organizers of the "No a la Baja" campaign say there is little evidence to suggest stiffer penalties are an effective mechanism for dissuading people from committing crimes. For one thing, they say, research suggests that not even adults make perfectly rational decisions when committing a crime. Studies that do supposedly demonstrate the dissuasive power of harsher punishments are based solely on police arrest numbers or conviction statistics and do not, therefore, attempt to evaluate what lawbreakers are supposedly thinking.

Such studies also fail, in large part, "to control for factors related to a person’s incarceration experience (whether, for example, an individual received some type of treatment) or release (whether the individual has ties to a stable partner or job)," Trajtenberg explained. Without taking such information into account, it is difficult to establish—in cases where the rate of recidivism does decline—whether harsher punishments alone were responsible.

**A climate of fear**

Stigmatizing children and adolescents has arisen within the context of an overall push by right-wing media outlets—which dominate the market—to foster a "feeling of uneasiness" that has little to do with Uruguay’s actual level of crime.

On May 9, Minister of the Interior Eduardo Bonomi pointed out how on that day—in the span of just four hours—the television station Montecarlo de Montevideo reported a single police incident 37 times. In each case, the station tagged the images with the words "live, right now," giving the impression that it was reporting not just one incident, but 37 different crimes. A month earlier, conservative media outlets—as part of their "crime" coverage—all reported on the case of a woman in an upscale Montevideo neighborhood who died during a storm when she was crushed by a falling tree.

"Instilling fear as part of a partisan platform and to promote a constitutional reform is immoral. It’s neither legally, politically, nor civically acceptable," said Luis Puig, an FA deputy and union leader for the PIT-CNT.

Blanco presidential candidate Jorge Larrañaga, originally an outspoken critic of the proposed reform, has softened his stance of late. Larrañaga admits that, for political reasons, it is not in his best interest to continue attacking the measure, even if he still disagrees with it.

Back in 2011, however, Larrañaga argued in an open letter to Bordaberry that the reform "is more about blaming and prematurely convicting young people than it is about protecting society." He
also said it is unfair to impose legal burdens on people who are not afforded the same civil rights as adults and who cannot, for example, vote or drive an automobile. In Uruguay there are 275,000 youth between the ages of 13 and 17, he pointed out. Fewer than 500 commit crimes. "The proposed measure means that, in exchange for surrendering and accepting that those 500 kids can't be controlled, we stigmatize the other 275,000, all young people."

**Church opposition**

Bordaberry and Lacalle Pou are both devout Catholics and, according to campaign advisors quoted in the newspaper El País, expected the new Archbishop of Montevideo Daniel Sturla to support their initiative. Their optimism came as a surprise to many given that Sturla—inaugurated archbishop on March 9—went on record two years ago opposing the reform.

In statements published May 7 in the daily El Observador, the prelate reiterated his opposition to the proposal but said he would not campaign against the "yes" option. That same day, in an interview with the television station Teledoce, he said that, "as a Salesian, I've always worked with young people in difficult situations, in risky situations. Lowering the age of criminal responsibility would send a negative message. The message would be that problems can be solved with more repression. I don't think that's the case: the only way to solve the crime problem is with more education."

Sturla noted that five of the country’s 16 bishops have already come out publicly against the reform. In Uruguay, the Catholic Church does not have a particularly strong presence or influence in social and political life, though it does serve as a reference point regarding certain issues. Among those opposing the initiative is the secretary general of the Conferencia Episcopal Uruguaya (CEU), Bishop Heriberto Bodeant. Speaking in the name of the CEU, Bodeant said, "This reform proposal puts all young people in the same bag and arises from a prejudice that fosters negative ideas about youth in general and about young people from the most disadvantaged sectors in particular."

At the start of the current school year, the Asociación Uruguaya de Educación Católica (AUDEC) distributed a statement in all of the country's Catholic schools expressing its "disavowal" of the reform bill. The Methodist, Lutheran, and Waldensian churches also oppose the measure. Among religious groups, the "yes" option is supported (with a few exceptions) only by pastors from the new evangelical churches, sometimes referred to disparagingly as "electronic churches."

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