

Jury Deliberation

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Abstract

Juries are tasked with the duty of deliberating and applying the law to the case at hand. But it is unclear whether juries deliberate or deliberate well enough. Factors which may affect jury deliberation are the motivation of jurors, characteristics of jurors, emotions during and after trial, bargaining, charges, and dissenters. This paper argues that jurors do engage in rigorous dialogue which eventually results in compromises, although whether this creates an unjust verdict is unclear.

Keywords

jury, deliberation, compromise, dissenters

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ABSTRACT

Juries are tasked with the duty of deliberating and applying the law to the case at hand. But it is unclear whether juries deliberate or deliberate well enough. Factors which may affect jury deliberation are the motivation of jurors, characteristics of jurors, emotions during and after trial, bargaining, charges, and dissenters. This paper argues that jurors do engage in rigorous dialogue which eventually results in compromises, although whether this creates an unjust verdict is unclear.

Do juries deliberate well? What occurs in the jury room is a secret in order to promote freedom of expression among jurors in order to produce fact finding and a just verdict. Juries are tasked with the duty of deliberating and applying the law to the case at hand. But it is unclear whether juries deliberate or deliberate well. Factors which may affect jury deliberation are the motivation of jurors, characteristics of jurors, emotions during and after trial, bargain of charges, and dissenters. Within academic research, using mock trials and surveys, studies have concluded juries do conduct deliberation. However, the research methods are not completely accurate, surveys are biased and mock trials are merely simulations. ABC produced a special called *In the Jury Room*, revealing six actual juries, their deliberations, and how they reached the verdict. In combination, this research and data demonstrates jurors do engage in rigorous dialogue which eventually results in compromise; whether this creates an unjust verdict is unclear.

What is competent deliberation? Ideally, competent deliberation is composed of respectful, open, and rigorous discussion with full consideration of the facts and

evidence. Jury deliberation should ideally embody democratic and egalitarian values. According to the study “Do Juries Deliberate,” a competent deliberation as defined above occurs in 35% of the cases (Gastil, Burkhalter, and Black 339). Only one in ten cases results in a reversal of the initial opinion of the jury during deliberation, meaning most juror’s initial opinion after the trial is the same after deliberation. This suggests jurors’ verdict choices are already determined prior to deliberation, but this does not prove jurors do not participate in rigorous deliberation. The National Center for State Courts (NCSC) conducted an experiment based on hung juries with participation from 3500 jurors in large, urban areas. The NCSC study concluded jury deliberation does impact the final verdict (Larsen 1576). Larsen concluded from the NCSC’s data that 62% of jurors changed their minds and 24% changed their mind during the trial. The rate of a hung jury is 6.2%, and 54% of hung jury trials consist of only one dissenter (Larsen 1576). 10% to 27% of juries hold early votes, thus the absence of the early vote implies juries continue to discuss the evidence (Gastil, Burkhalter, and Black 341). Juries conduct two types of

deliberation styles; verdict-driven and evidence-driven. Verdict-driven deliberation consists of an early vote and ample discussion focused on verdict choices, while evidence-driven is more deliberative because jurors discuss evidence thoroughly. Often evidence-driven deliberation allows for more time to speak, allowing minority voices respect and equality. The role of deliberation is to legitimize not only the verdict, but also the jury itself. Hans and Vidmar stated, "Even if its impact on the ultimate verdict is modest, deliberation helps to assure the integrity of jury decision making" (Gastil, Burkhalter, and Black 339). Jury deliberation is a cornerstone of the US Judicial System and of democratic involvement; it is crucial for the integrity of juries to stay intact. The key to fulfilling the duty of competent deliberation is to analyze evidence carefully, discuss instructions, ensure adequate time for each juror to speak, maintain mutual respect, and discuss the judge's instructions. Judges from the Seattle Circuit Courts give the instructions: "Each of you must decide the case for yourselves, but you should do so only after you have considered all of the evidence, [and] discussed it fully with your fellow jurors." The judges are encouraged to add, "Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right" (Gastil, Burkhalter, and Black 340). It is evident, jurors deliberate, thus resulting in a difference of opinion regarding the case; therefore deliberation does impact the final verdict. But it is still unclear whether types of discussion, verdict-driven or evidence-driven deliberations, impede justice and are competent forms of deliberation.

Juror satisfaction suggests forms of

deliberation and quality of the discussion, because it involves individual jurors' participation and perception of jury deliberation. Satisfaction with the deliberation implies the task at hand was appropriately addressed. Quality of interpretation of evidence and equity and respect among the jury are factors predictive of group satisfaction (Gastil, Burkhalter, and Black 345). The study "Do Juries Deliberate" concludes 89% of jurors thoroughly discussed facts of the case and listened and respected their fellow jurors. 67% of jurors discussed the judge's instructions. Furthermore, 95% of jurors felt they had ample time to express themselves. The study concluded that juries deliberate and they understand their role as one focused on deliberation (Gastil, Burkhalter, and Black 353). With this data it is evident jurors partake in competent forms of deliberation, invoking democratic values, prudence, and egalitarianism. But these studies used post-trial surveys, which may be biased. If jurors had naive or romantic feelings towards the group's discussion, their opinions may not want to criticize the quality of their work because this undermines the verdict choice, a choice someone's life depended on. It is easier to look past one's own bad choices while essentially grading one's self in a survey. But if this data is for the most part honest and correct, then it can be concluded jurors uphold their deliberative duty to their community.

Individual jurors are impacted by their political knowledge and skills, leadership skills, their motivation, self-confidence, and partisanship. The study "Do Juries Deliberate" sought to measure these characteristics of jurors and how they affect deliberation (Gastil, Burkhalter, and Black 338). The study had many theories.

Hypothesis 1a predicted juries report more deliberative experiences when they have a favorable disposition toward the jury system, because they believe in the value of juries they seek to promote them in discussion. The study concluded the jurors who had more stock in the system were more likely to experience respect (Gastil, Burkhalter, and Black 353). Hypothesis 1b predicts juries will report more deliberation when there is perception of potential common ground with members that have similar ideological backgrounds. Partisan diversity can be interpreted as a threat to a common ground a juror may feel is necessary for effective deliberation. Hypothesis 1c predicts jurors will repeat more deliberative experiences when they have higher levels of political knowledge and formal education. Education and knowledge help jurors work through complex dilemmas. Jurors with high levels of education, motivation, and favor toward the system act as catalysts, promoting deliberation. These jurors draw on communication skills they need to deliberate from their education and often take on a leadership role to promote the values of a jury, equality and respect. Hypothesis 1d predicts jurors will report better deliberative experiences with higher levels of motivation. Motivation is affected by political self-confidence, willingness to serve on a jury, and interest of case being tried. Jurors with higher self-confidence combined with their interest in the trial were more likely to engage in more thorough analysis (Gastil, Burkhalter, and Black 353). Also, uneven distribution of characteristics among jurors may prompt problems during deliberation. Unequal knowledge and skill may undermine group members' assessment of deliberation, because jurors may feel as if they should not speak or cannot speak and therefore the environment leads to a less

thorough deliberation. There are two rival views regarding inequalities among jurors. One stresses the value of knowledge and skill while the other stresses that inequalities among jurors actually undermines competent deliberation (Gastil, Burkhalter, and Black 344). From the study it is evident individual characteristics affect deliberation dramatically. While education may help an individual juror, it has the potential to undermine the jury as a whole. For juries it may not be helpful to the deliberation if educated jurors are controlling the deliberation by taking on leadership positions due to their increase in self-confidence and knowledge. In addition, it is easy to comprehend how diversity of partisanship can undermine stability and produce factions, but this may promote more discussion than a jury of the same beliefs. Due to the need to promote one's side there would be less motivation to debate if everyone agrees. But instability due to partisanship diversity would create a higher tendency to compromise.

Emotions run high during a trial and in the jury room. There are many parts to the trial process where emotions can impact a juror's thought process and physical well-being, and can influence social functioning. Observers interpret emotions within a social situation which affects social interaction. Emotions are subjective feelings which seem objective to an individual juror. According to a study, "How Emotion Affects the Trial Process," there are three trial-related factors which may affect emotions (Miller, et al. 56). The first factor is when the prosecutor may show emotion-evoking evidence, such as gruesome photos of the crime or injuries. The second factor is during sentencing hearings, when victims and victims' families give statements describing how the crime

has affected their lives. The third factor which evokes emotion is the defendant's behavior during a trial. Through these factors the jurors are able to understand the impact of the crime, the level of violence, and mindset of the offender. These factors also create anger, disgust towards the offender, and sympathy for the victim. Convictions increase when graphic evidence is shown, because anger resulting from witnessing the violence leads to finding someone to blame and hold accountable, and the defendant is set up to receive this blame (Miller et al. 57). Emotions allow a juror to become invested in the trial, to care about justice. But emotions of anger and sadness lead jurors to find someone to blame, to feel the need to hold someone accountable, because they are now accountable and responsible to provide justice for the victims. The US judicial system promotes this rationale, but this rationale does not promote egalitarian or democratic deliberation.

“Jurors arguing and coming to some sort of compromise is just part of the system;” this is the stereotype of the cynical point of view of the US Judicial System (Larsen 1574). Jury deliberation often leads to bargaining and compromises. The menu of options, or charges, leads jurors to believe the defendant must be guilty of one of these options; these jurors tend to be pro-prosecution and resort to an “accountability” deal (Larsen 1573). Sometimes the menu of options leads to a compromise resulting in a “mercy” deal (Larsen 1573). One judge stated, “the jury, if it cannot agree on the basic issue of guilt, may seek the course of least resistance in the jury room, and unjustly convict on the lesser offense instead of forth righting acquitting,” (Larsen 1575). Since jury deliberations are mostly in secret, it is unknown how deals

are made. This suggests verdicts made with compromise are unjust. Chief Justice Burger stated, “Courts have long held that in practical business of deciding cases the fact finders, not unlike negotiations, are permitted the luxury of verdicts reached by compromise,” (Larsen 1583). Compromised verdicts undermine the Judicial System, creating a lack of public confidence in the entire criminal justice system since compromised verdicts indicates the jury was incompetent for not uncovering the truth. The motive behind a compromising jury is indifference about civic duty, and if they do care about civic duty, they compromise due to a good enough deal or compromise. In a mock trial stimulation, Kelman, a social scientist, predicted that decision-making behavior is altered by the presence or absence of options, the “compromise effect” (Larsen 1577). Kelman concluded an option does better by being in the middle of other choices. The presence or absence of higher charges affect how jurors saw the case, confirming tendencies for compromise among verdict alternatives (Larsen 1578). Hastie, a social scientist, conducted an experiment with a mock trial, tracking factions within a jury based on options of charges. One group had to have unanimity, the other just a majority decision (Larsen 1581). Within the experiment, there were differences in factions depending upon the unanimity requirement and large factions were unlikely to change. Hastie concluded people form factions to track verdict opinions because deliberations are most likely verdict driven. Juries are then polarized after group discussion because individuals’ ideas become more extreme through the discussion, and then the jurors negotiate with each other until a compromise is made because they are motivated to make a deal (Larsen 1582).

But do compromise verdicts compromise justice? Juries are not designed to produce negotiators. Jurors are ignorant of consequences of the deal they make, but they are also not part of any interested party. Deals made with ignorance result in bad bargains, thus ending in injustice and inconsistency. At least in plea bargains, a defendant's lawyer is present. Compromises may lead to a compromise in reasonable doubt standard, which results in the problems of mercy and innocence (Larsen 1606). Mercy problems result when the defendant is guilty and the jury gives them a light sentence. The innocence problem results when an innocent person is charged. But compromises are not mistakes and are not illegitimate, because they can be the result of rigorous deliberation and therefore have the potential to be just. Jurors create deals because it is a natural course of group decision making. Compromises in the jury room are not unjust because they reflect a give and a take. A defendant may not be completely guilty of a crime but guilty of something; thus by determining between guilty and not guilty, jurors compromise. This is almost a quasi-form of nullification, because jurors ignore their duty to apply the law in a way that is justice to the community. But compromises are not always the result of deals. Compromises may result in battering and bullying small factions of dissenters into submission, which results in the innocence or mercy problems.

Since deals are made through negotiation, some jurors have to change their minds in order to come to a consensus. The cynical viewpoint of juries suggests jurors make up their minds after opening statements. This may form the conclusion deliberation is useless and the result is predetermined. However, statistics prove this is not true because there would be more than 6% of

hung juries, because someone has to change their opinion. Mock trials even suggest an asymmetrical bias, that those who share the minority opinion arguing for acquittal have an easier time convincing others to find a defendant not guilty than those convincing minorities of guilt (Waters and Hans 516). In their study, "A Jury of One," Waters and Hans asked when jurors started leaning toward a specific side (Waters and Hans 521). The findings indicate 40% leaned toward conviction after prosecution's evidence and only 15% leaned toward acquittal after defense's evidence. During jury deliberation 15% were for acquittal, 21% wanted to convict, and 24% leaned toward a hung jury. Waters and Hans determined 62% of jurors changed their minds at least once. 38% of juries have dissenters of one person who was at odds with the final verdict (Waters and Hans 522). 28% of holdouts in jury deliberation change their mind (Waters and Hans 525). Dissenting jurors are skeptical that all the evidence is shown, they perceive the prosecution as less skillful, and had less satisfaction with deliberation. Dissenters often reported dissatisfaction when there were only a few people dominating discussion (Waters and Hans 528). Dissenters are more likely on juries who cast an early vote. Dissenters often believe the evidence is hard to understand, and that the consequences did not apply to the defendant fairly. Ethnic backgrounds and education levels do not predict dissent, except when it comes to Hispanic jurors or victims (Waters and Hans 531).

In the ABC special, *In the Jury Room*, the case *Colorado vs. Lauren Trujillo* evoked intense emotions. Lauren Trujillo was charged with potentially abusing her daughter to the point of death or reckless behavior leading to her daughter's death.

Throughout the trial the jury was crying. They were shown autopsy pictures of the two year old's body. The child died of severe skull trauma and all of the victim's organs were ripped and torn. The medical examiner also took a teddy bear and demonstrated the amount of impact it would take for the daughter to sustain such a head injury. The noise created by the demonstration echoed throughout the room and made people cringe. The photos and demonstrations caused the jury to be angry and cast their blame, which was focused on the mother during deliberations. However, the jury also had sympathy for the mother, who slept during the abuse of her daughter. The mother took painkillers for pain of injuries and paralyzation caused by a shooting. The mother was also in an abusive relationship. The mother's boyfriend admitted to abusing the child and took the plea bargain to testify against the mother. A psychologist testified the mother suffered from battered women's syndrome because she only knew abuse. She had been raped and sought a relationship with an abusive man due to the syndrome. During deliberation the jury could not imagine the mother had no knowledge to the extent of the abuse because her daughter had broken ribs; however they jury decided she was not abusive toward her daughter. Half of the jury believed her to be reckless because she kept her child in an abusive environment. The jury decided to "make concessions" when split on what to charge Trujillo, because the jurors had different viewpoints and would never agree. This is an example of deal making and instability due to ideological differences. The jury compromised on the lightest charge of recklessness, which was a misdemeanor of two years in jail, but the jury did not know this. The deal the jury negotiated is an example of an "accountability" deal,

because the jury agreed the mother had to be held responsible for something. This jury was dramatically influenced by their emotions created by the emotion-evoking images and demonstrations of the abuse inflicted on the victim.

In the case of *Arizona vs. Wendy Sue Anderson*, another ABC special episode of *In the Jury Room*, the jury demonstrated the effects of the tendency to conform due to peer pressure and the effects of emotion. Anderson was on trial for drinking and driving, actions which ended the life of a young boy and permanently damaged his father. The victims were recklessly driving a motorcycle at the time of the accident. The majority opinion in the deliberation room after the trial was that the woman was reckless because of blood alcohol content. The prosecution had demonstrated the woman's BAC with a sign; .244 was written in bright red in large font. While there were inconsistencies in regards to the facts of case, the majority of jurors did not care because the woman drove drunk; thus the sign had remained with the jurors throughout the trial. Among the jury there was an architect, engineer, teacher, construction supervisor, retiree, technical editor, and a cafeteria worker. The architect took on the position of foreman, which demonstrated how a person with higher levels of education is more likely to take on a leadership role on a jury. But the occupations also show an inequality among jurors and how this may cause instability. The dissenter of the jury, Rhonda, was a cafeteria worker. Rhonda is an example of the stereotype of a dissenter. She is Hispanic, a blue collar worker, believed the cops and system did not do an adequate job, and was unsure about the evidence. But the rest of the jury believed otherwise and due to being the lone dissenter and not having a

faction to support her, Rhonda caved and voted guilty, even though she did not want to.

The juries of the ABC special, *In the Jury Room*, deliberated rigorously, compromised, negotiated, and carried out the characteristics and stereotypes of jurors according to the studies “Do Juries Deliberate,” “How Emotions Affect the Trial Process,” and “A Jury of One”. While this ABC special allowed insight into the jury room, the six cases shown are not indicative of cases across the country. Furthermore, ABC edited the footage of the trial and deliberation, and therefore viewers did not receive the entire picture. But *In the Jury Room* in tandem with academic studies on juries provides greater insight on how juries deliberate. Deliberation is dependent on individual juror characteristics, emotion-invoking evidence from the trial,

and the motivation of discussion. While juries do deliberate rigorously and promote egalitarian and democratic values, they also compromise. Juries compromise because compromises are natural within group discussion and due to the unanimity requirement. Compromises are not unjust but there is a difference between compromises and bad bargaining. Compromises may reflect a quasi-nullification if the option of charges do not apply well to the defendant. But this may also be the result of needing to hold someone accountable. Bad bargains are unjust because they are not the result of egalitarian discussion, because majority factions take over and bully dissenters either into a hung jury or most likely towards majority opinion. Overall, juries complete their duties effectively through rigorous deliberation.

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