

Jury Decision Making: Implications For and From Psychology

Current Directions in Psychological Science
20(1) 63-67
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DOI: 10.1177/0963721410397282
http://cdps.sagepub.com



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Abstract

Jury trials play a centrally important role in the law, and they are also of interest to psychologists. The manner in which individual jurors perceive, interpret, and remember evidence, as well as the group processes involved in jury deliberation, can be described in terms of fundamental cognitive and social psychological concepts. Juries provide a real-world laboratory for examining theoretical issues related to reasoning, memory, judgment and decision making, attribution, stereotyping, persuasion, and group behavior. Conversely, psychological research can inform trial procedures, enabling juries to benefit from fairer procedures and reach better outcomes. Thus, jury decision making has implications for psychological theory, and psychological research has implications for legal policy.

Keywords

juries, decision making, public policy

The jury is a unique institution: It requires ordinary citizens who lack legal training to hear evidence, make sense of conflicting facts, and apply legal rules to reach a verdict about which all (or sometimes just most) jurors can agree. Although only a small and diminishing proportion of legal disputes are ultimately resolved by jury trial, thousands of cases are still decided by juries each year, and predictions about potential verdicts influence decisions to settle civil lawsuits and to offer and accept plea bargains in criminal cases. Thus, jury trials assume a role of central importance in the law.

Juries also interest psychologists who examine how individuals perceive, interpret, and remember evidence and the ways they reach consensus with others. Juries provide a real-world laboratory for examining theoretical concepts related to reasoning, memory, judgment and decision making, attribution, stereotyping, persuasion, and group behavior. Conversely, psychological research can inform trial procedures. Thus, jury decision making has implications for psychological research and vice versa.

Arguably, no other institution so thoroughly entrusts citizens to govern themselves. Many countries (including Australia, Canada, England, Wales, Ireland, New Zealand, Korea, Scotland, Spain, Japan, Russia, and the United States) use juries in criminal cases, and some do so in civil cases also. In the United States, if selected persons meet minimal requirements concerning citizenship, age, literacy, and residency, they take their turn as jurors. Ironically, though, the democratization of jury service has also led to controversy about jurors' ability to deliver justice fairly and predictably. Among the concerns

are that laypeople are ill equipped to handle complex evidence, that they are swayed by sympathy, and that they award extravagant sums of money for frivolous claims (Greene, 2009).

These criticisms, along with extensive media coverage of sensational cases, have led to claims of jury incompetence and calls for reform (for review, see Bornstein & Robicheaux, 2008). Although it is important to strive to improve jury performance, our position is that the glass of jury behavior is already half full (Greene & Bornstein, 2003). That is, we believe that empirical data show that juries generally do a good job of weighing the evidence and applying the law. Furthermore, when they occasionally err, they do so in ways that reflect well-documented, universal psychological principles such as heuristic reasoning and attribution errors.

Research on jurors and juries affords the opportunity to conduct basic and applied research simultaneously, and juries are a natural laboratory for examining individual decision making as well as group dynamics. Research can focus on decision *processes* (e.g., attribution, hypothesis testing), as well as decision *outcomes* (e.g., verdicts). In addition, the findings can be used to inform real-world policies and procedures, such as improving jury instructions or deciding whether to allow jurors to ask questions of witnesses (Greene & Bornstein, 2000).

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In the remainder of this article, we discuss how to assess juror and jury decisions; some of the psychological processes involved in jurors' and juries' decision making; and several key findings regarding their behavior, linking those results to both fundamental psychological principles and legal procedures. We conclude with some future directions and recommendations for improving jury performance in light of what psychology can offer.

Assessing Jury Decisions

The greatest difficulty in assessing jury decisions—from either a psychological or a legal perspective—is the impossibility, in most cases, of knowing whether the jury reached the “right” verdict. Occasionally, subsequent evidence comes to light (e.g., DNA evidence, a confession, a damning internal memo), but such instances are rare. Convicts' protestations of innocence notwithstanding, there is no way to tell—short of DNA testing in the small percentage of cases in which such evidence exists—whether they actually committed the crime. Civil cases are arguably even more problematic, as the issues involve matters of degree (e.g., How careless was the defendant's conduct? How much money would fairly compensate the plaintiff?).

The question, then, is usually not whether the jury reached the *correct* verdict, but whether the verdict was reasonable in light of the evidence and the law. Consider, for example, O.J. Simpson's criminal trial for the murders of Ronald Goldman and Nicole Brown Simpson: Was the jury's acquittal of Simpson the optimal verdict? Many if not most observers would say “probably not.” But did jurors reach a reasonable verdict? Almost certainly “yes,” in light of evidentiary inconsistencies, allegations of police misconduct, and the very high standard of proof. Because jury trials are, by definition, close cases—otherwise, they are dropped, settled, or plea bargained—almost all verdicts are going to be reasonable. How then to assess jury performance?

There are three (and possibly more) answers to this question, all of which have psychological implications: comprehension, reliance on evidence, and comparison to expert decision makers. Jurors' comprehension—especially of judges' instructions—is generally poor. Performance varies depending on the subject matter and testing format, but figures under 50% are not uncommon. Such findings have led the American Bar Association to advocate rewriting instructions, an effort that many jurisdictions have undertaken. Of course, comprehension measures are not an ideal proxy for performance; comprehension may be good, but it might not translate into accurate judgments; or jurors might reach good decisions despite poor comprehension. Thus, better comprehension does not necessarily mean better performance.

A second way of assessing jurors' performance is to ask whether they rely properly on legal evidence. For example, do they use evidence they are supposed to use and ignore information they are supposed to ignore (often referred to as “extralegal” evidence)? Do they discriminate among plaintiffs differing in injury severity, eyewitnesses with good (vs. poor) opportunities to observe a crime, and capital defendants whose cases involve aggravating (vs. mitigating) circumstances?

Findings on these questions are mixed but are generally more positive than negative. For example, the strength of the prosecution's evidence is a strong predictor of verdicts in criminal cases (Devine, Buddenbaum, Houp, Studebaker, & Stolle, 2009), injury severity is the best predictor of damage awards in civil cases (Greene & Bornstein, 2003), and capital jurors are generally responsive to the balance of aggravating versus mitigating factors (Miller & Bornstein, 2006). In fact, the substantive evidence presented in a trial is the most powerful determinant of jurors' verdicts.

On the other hand, it is sometimes difficult for jurors to make appropriate use of trial information. For example, in cases involving multiple plaintiffs, they have difficulty assigning awards consistent with each plaintiff's injuries (Horowitz & Bordens, 2000); testimony that jurors hear but has subsequently been ruled inadmissible nonetheless influences their decisions (Stebly, Hosch, Culhane, & McWethy, 2006); and their preexisting cognitive schemas about the law sometimes conflict with the legal rules relevant to a particular case (Smith, 1991). These findings are not surprising in light of what we know about decision making: People often rely on heuristics that can lead to erroneous judgments, and they have difficulty compartmentalizing their knowledge.

Critics of juries often assume, explicitly or implicitly, that judges would “do better”—that is, that they would reach verdicts that are more in line with the evidence. This is a reasonable expectation, inasmuch as judges are experts in a domain in which jurors are novices; and experts generally make better decisions. Overall, though, judges agree with jury verdicts roughly 75% to 80% of the time (Eisenberg et al., 2005), and this high rate of agreement occurs across cases of varying factual and legal complexity. Moreover, when jurors and judges disagree, there is usually credible evidence to support both sides. Furthermore, judges need not be considered the “gold standard,” as their reasoning is susceptible to the same sorts of biases as jurors' reasoning (Wistrich, Guthrie, & Rachlinski, 2005).

Juror and Jury Decision Processes

A jury trial typically involves contradictory accounts of past events and, often, uncertainty about future events as well (e.g., criminal defendants' dangerousness, civil plaintiffs' pain and suffering). Research on how jurors make sense of this discrepant information shows that they engage in an explanation-based decision process: They actively evaluate conflicting claims and construct a narrative framework that provides a plausible interpretation of the evidence (Pennington & Hastie, 1992). Because these narratives influence predeliberation verdict preferences, jurors must reconcile their differing perspectives during deliberations.

Juror decisions

Why do jurors who hear identical pieces of (albeit conflicting) evidence construct different stories? They do so primarily because they filter the evidence through their own experiences,

expectations, values, and beliefs. And, like all decision makers, jurors tend to seek out and remember information that is consistent with their verdict preference and scrutinize and reject information that is inconsistent with that preference (Carlson & Russo, 2001). These initial preferences can come from general legal attitudes, preexisting cognitive schemas about the law, pre-trial publicity, opening statements, or early trial evidence.

The depiction of jurors as active information processors means that more than just the evidence and legal guidelines influence their decision making. Jurors attend also to peripheral cues associated with the evidence, such as the perceived credibility of a lay witness, the credentials of an expert witness, or the attractiveness of various legal actors. Dual-process models of cognition positing that people can process information either rapidly, through a heuristic or experiential system of automatic responses, or effortfully, through a systematic or rational system, are applicable to jurors. Indeed, jurors sometimes rely on cognitive heuristics when making complicated judgments about the probative value of discrete pieces of evidence, particularly when that evidence concerns issues about which they have little expertise. The awarding of damages is illustrative: Because jurors typically lack confidence in their ability to assign dollar values to various injuries, they tend to rely on the estimates (anchors) provided during trial (Bornstein & Greene, *in press*). Other heuristics, including the hindsight bias (seeing a possibility as more likely when one knows the outcome), counterfactual thinking (considering alternative outcomes), availability (relying on how easy it is to retrieve information when making judgments), and representativeness (overattending to salient features) have also been implicated in juror decision-making outcomes. In addition, jurors' emotions and moods can affect their judgments in various ways: by influencing the type of information processing in which they engage, by inclining them to construe evidence in a direction consistent with their moods, and by providing informational cues about the appropriate verdict (Feigenson, 2010).

However, there is plenty of evidence that jurors also use careful, systematic processing strategies. Despite critics' contentions that jurors lack the ability to comprehend complex scientific and technical evidence, posttrial interviews show that jurors tend to analyze expert evidence in a fairly rational and methodical way. They strive to evaluate the quality of experts' arguments and spend considerable deliberation time discussing the nature of the experts' testimony, which is clearly suggestive of systematic processing (Vidmar & Diamond, 2001). Jurors also perceive themselves to be careful evaluators of the evidence; a strong majority of jurors interviewed after deliberating said that they thoroughly reviewed the evidence and jury instructions in the process of reaching their verdict (Devine, Buddenbaum, Houp, Stolle, & Studebaker, 2007).

Jury decisions

Although psychologists have devoted considerable effort to understanding how the processing styles and sentiments of individual jurors affect their judgments, actual verdicts are obviously

a function of group processes. The strongest predictor of a jury's verdict is the distribution of individual predeliberation verdicts: In approximately 90% of trials, the position favored by the majority at the beginning of deliberations becomes the jury verdict. But we know fairly little about how individual preferences are translated into a group decision, including the extent to which the majority exerts normative and/or informational influence over minority jurors. Interestingly, minority jurors apparently acquiesce to the majority position only when they become convinced, through careful deliberation, of the wisdom of the majority (Salerno & Diamond, 2010), suggesting that informational influence exceeds normative influence in deliberation.

With respect to decision processes, deliberating jurors tend to stay focused on the relevant evidence during their deliberations, have good collective memory of trial-related information, and sanction members who interject personal or legally irrelevant information. But studies show that jurors collectively struggle to interpret jury instructions. Occasionally, those with a good understanding of the instructions can clarify them for others. But more commonly, deliberations do not improve comprehension or correct misconceptions.

Psychological research has identified two styles of deliberation: verdict driven and evidence driven (Lieberman & Krauss, 2009). Verdict-driven juries take an early vote and then structure the discussion around available verdict options, seeking to identify the option that is most acceptable to jurors. Evidence-driven juries spend time evaluating the evidence and attempting to discern the "truth" from conflicting facts. They tend not to take frequent tallies and sometimes rely on a final vote merely to formalize their evaluation of the evidence. These findings have implications for policies concerning the "decision rule"—the number of jurors who must agree on a verdict. When unanimity is required, deliberations are likely to be evidence driven and more thorough than when a majority rule is in place. This phenomenon illustrates the opportunity for psychological research to inform legal policy.

Regarding decision outcomes, a criminal jury must be convinced "beyond a reasonable doubt" of the defendant's guilt before it can convict. Discussion about this standard during deliberation results in a "leniency effect" wherein juries are more likely than individual jurors to favor the defendant in a criminal trial (MacCoun & Kerr, 1988).

Conclusions

The jury is a curious institution—a hallmark of Anglo-American legal procedure, yet one that is used sparingly. It is also a rich domain for psychologists to mine. The study of jury decision making can contribute to a better understanding of a number of social and cognitive psychological processes. Conversely, psychological theory has important implications for jury policies and procedures. Hence, it is an area that spans the basic–applied divide that characterizes much of contemporary psychology.

The study of jury behavior makes clear that jurors' task is not an easy one. Although jurors perform their duties reasonably

well, there is nonetheless room for improvement. Psychological research studies have suggested several ways to enhance jury trials, including providing preliminary jury instructions (pre-trial); allowing jurors to take notes and ask questions, providing midtrial summaries and simplifying jury instructions (during trial); and debriefing jurors who have served on difficult, stressful cases (posttrial). These innovations can improve the process of decision making and trial outcomes while also enhancing juror satisfaction. In addition, by documenting various factors that influence jurors' decisions, researchers can contribute to a better understanding of the basic social and cognitive processes involved when people make collective decisions on the basis of complex and contradictory information.

In the future, juries and judges will confront a number of new challenges that demand continued research efforts. Increasingly, trials include visual and digital evidence presentations such as animations, video recordings, and virtual-reality reenactments. How jurors attend to and process this information during trial and rely on it during deliberation will concern future legal psychologists. Of particular concern to courts is jurors' increasing use of cell phones, the Internet, and social networking sites to communicate about a trial, conduct trial-related research, and communicate with other jurors. The implications of these phenomena, and research on their effects, will inform future policies regarding jury trials. Thus, psychological research will continue to have much to offer, and take from, the jury system.

Recommended Reading

- Greene, E., & Bornstein, B.H. (2003). (See References). A summary of empirical research on jury decision making in civil cases.
- Lieberman, J., & Krauss, D. (2009). (See References). Application of psychological principles and theories to various aspects of juror and jury behavior.
- Vidmar, N., & Hans, V.P. (2007). *American juries: The verdict*. Amherst, NY: Prometheus Books. A historical and contemporary overview of the jury, containing case anecdotes as well as empirical research.

Declaration of Conflicting Interests

The authors declared that they had no conflicts of interest with respect to their authorship or the publication of this article.

Funding

The author(s) received no financial support for the research and/or authorship of this article.

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