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Jury Selection in Two Countries: A Psychological Perspective

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Jury Selection in Two Countries: a Psychological Perspective

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A comparative survey of jury selection practices in Britain and the United States indicates that the two countries differ along a number of dimensions, including the emphasis on the jury selection process in the trial, the amount and type of information available about prospective jurors, and the frequency with which trial lawyers alter the composition of the jury. The probable impact of these differences is analysed by considering the importance of jury composition in determining a jury's verdict, the effectiveness of lawyers in exercising their challenges, and broader effects of jury selection procedures in the two countries.

One area in the psychology-law field that has engendered the theoretical and practical involvement of psychologists is jury selection. Their presence is understandable, since many key issues in jury selection are essentially psychological problems. The notion of the impartial juror, the effects of individual characteristics on decision-making, the assessment of community opinion about a case, and the detection of bias in the courtroom are all questions well within the domain of the psychologist. Accordingly, several psychologists have employed their theoretical background and methodological skills to assist attorneys with jury selection in individual cases. However, until recently, psychologists have directed relatively little attention to analysing and evaluating the relative efficacy of different jury selection procedures.

The present review of jury selection in Britain and the United States of America is an effort in this direction. Both countries possess a common law heritage of trial by jury, and their citizens share perceptions that the composition of the jury is an important determinant of its verdict. Yet the two countries have developed radically different practices in jury selection. Dimensions along which Britain and the USA differ include the importance and expansiveness of the jury selection process, the amount and type of information available about prospective

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jurors, and the frequency with which trial lawyers alter the composition of the jury through challenges.

Given the diverse ways in which juries are selected in the two countries, it is of interest to explore the likely effects of such differences. The objectives of this article are twofold: first, to review in a comparative fashion the jury selection procedures of Britain and the USA; and, second, to analyse the probable impact of differences in these procedures from a psychological perspective.

THE REPRESENTATIVE JURY

The legal systems of both the USA and Britain share the ideal of the representative jury. In an extensive treatise on the British jury system, the Departmental Committee on Jury Service stated that: 'It is ... inherent in the very idea of a jury that it should be as far as possible a genuine cross-section of the adult community' (Report of the Departmental Committee on Jury Service, 1965, p. 17). Similarly, in the USA, a long line of United States Supreme Court decisions has defined and upheld the right to a jury drawn from a representative cross-section of the community (Kairys, Schulman & Harring, 1975). However, only in the last decade have changes in the jury selection systems of both countries brought the reality of jury panel selection more in accord with this ideal. Historically, in Britain, a property qualification for jury service resulted in predominantly male juries with marked under-representation of ethnic and lower-class groups. Before 1972, eligibility for jury service was largely restricted to ratepayers, which in practice meant individuals who paid rates (taxes) on personally owned property. This qualification typically eliminated wives living with their husbands, since husbands most often were listed as ratepayers, as well as any other adults in the household. It also excluded people living in lodgings or hotels. An additional restriction was that the property had to be rated as at least £30.00 in the counties of London and Middlesex and at least £20.00 elsewhere (Report of the Departmental Committee on Jury Service, 1965, pp. 13-15). With the abolishment of the property qualification in 1972, the representativeness of juries increased, but still falls short of adequately reflecting the community. For example, Baldwin and McConville report (1979, 1980) that in their 1975 study of Birmingham juries, about three-quarters of jury members were male, and people of New Commonwealth and Irish origin were significantly under-represented.

The history of jury pool selection in the USA reveals striking parallels. Prior to 1968, a 'key man' system, in which key members of the community recommended people for jury service, was often employed in assembling jury panels. After the Jury Selection and Service Act of 1968, which mandated that voting lists be used as the source of jury pools, the representativeness of jury panels improved. But data collected in the last decade have consistently demonstrated that women, the young, racial minorities, and the poor are not represented on jury panels in proportion to their numbers in the population (Kairys, Schulman & Harring, 1975; Alker, Hosticka & Mitchell, 1976; Van Dyke, 1977). While the use of additional source lists and increasing reliance on computer technology may improve the picture in the future, the ideal of the representative jury has not yet been realized.

Both countries provide for challenges to the jury pool or panel on the grounds that it is biased or non-representative, but these challenges are initiated rarely. In Britain, a recent challenge to the array by defence counsel in a trial involving political and racial issues was thought to be the first time in over 150 years that

such a challenge had been mounted in England (Pithers, 1982a). In the USA, challenges to the panel are more frequent though for a number of reasons not often successful (cf. Hans & Vidmar, 1982). In most cases in both countries, then, the jury is selected from a group which is only moderately representative of the community.

INFORMATION AVAILABLE ABOUT PROSPECTIVE JURORS

Britain

In the typical British case, very little is known about prospective jurors prior to the beginning of the trial. Each side is entitled to inspect a copy of the jury list before the trial opens, but the list contains only the names and addresses of jury panel members. Jurors' occupations were included on jury lists until 1973, but in that year the Lord Chancellor, who was concerned about the apparent use of occupation information by defence barristers in exercising peremptory challenges, ordered that jurors' occupations no longer appear on the lists.

In Britain, the provision of any additional information about prospective jurors to parties in a dispute will typically generate considerable controversy. The reaction to the discovery that in some political cases Crown prosecutors were consulting with the police to obtain information on jury panel members which later might be used to eliminate jurors, a practice dubbed 'jury vetting', is a case in point. In the 1978 prosecution of a soldier and two journalists under the Official Secrets Act, Crown counsel had checked the jury list with police prior to trial to determine whether any prospective jurors were 'disloyal'. Defence counsel discovered this collaboration from a clerk of the court, and publicized it. A huge public outcry followed (Thompson, 1978; Harman & Griffith, 1979). In response, the Attorney General issued a statement justifying the practice of jury vetting in those cases where ordinary procedures of trial by jury might not be sufficient to ensure the proper administration of justice. An examination of the 25 trials in which jury vetting had been secretly authorized from 1975 to 1978 indicated that it occurred most often in political trials or cases involving organized crime figures. The decision to permit jury vetting in particular cases rests with the Director of Public Prosecutions or the Director's deputy. Thus, before the trial begins, the defence is limited in all cases to the jurors' names and addresses, while in special cases the prosecutor may undertake with authorization additional investigation of prospective jurors.

In contrast to US courts, there is little or no opportunity in British courts to question jury panel members about their attitudes towards the case at the start of the trial. There have been only occasional exceptions to this rule. The most celebrated instance, and the one which generated the fiercest backlash, was the 'Angry Brigade' trial in 1973. In that highly political trial, defence barristers were allowed by the judge to ask questions of prospective jurors, including what newspapers they read regularly and their political affiliation, for the purpose of establishing whether jurors would be biased against the defendants. Members of the judiciary disapproved of the range of questioning allowed to the defence in this trial. As a result, the Lord Chief Justice issued a Practice Direction to judges, reminding them that 'A jury consists of twelve individuals chosen at random ... It is contrary to established practice for jurors to be excused on more general grounds

such as race, religion, or political beliefs or occupation' (Practice Direction, 1973, p. 240).

Broad-ranging questions have apparently not been asked of jurors since the Angry Brigade trial. Newspaper reports of cases involving political or racial overtones reveal that while judges do allow some limited examination of prospective jurors, the questions are relatively narrow in scope and closely linked to the case at hand. For example, in two recent cases involving racial issues, prospective jurors were asked about their views of non-white citizens and the National Front (Pithers, 1982b; Shirley, 1982). In another case where the organizer of the National Viewers' and Listeners' Association, a group attempting to promote 'decency' in the media, brought a private prosecution on obscenity charges against a London theatre company director, the judge told the jurors to declare whether they were members of the association (Nicholson-Lord, 1982). However, the existence of even this sort of limited questioning is by all accounts quite rare.

USA

The amount of information available about prospective jurors to attorneys in the United States is almost always greater than the information provided to their British counterparts. First, prior to the opening of the trial, both defence and prosecuting attorneys have basic information about jury panel members, such as age, gender, address, occupation, and relationships with members of the police and legal profession, obtained from their responses to jury questionnaires sent out in most jurisdictions. Attorneys may also have information from police records on jury panel members (Okun, 1968; Bush, 1976). But the most important source of information for US attorneys is the voir dire questioning period which is a normal part of every jury trial.

During the voir dire, prospective jurors are examined by judges and/or lawyers concerning their qualifications and possible prejudices in the case. While the voir dire is routine, the manner in which it is conducted and the amount of information obtained from jury panel members vary tremendously from jurisdiction to jurisdiction. The desirability of different methods of conducting the voir dire has been the subject of considerable debate.

One aspect of the conduct of the voir dire which is quite controversial is whether the judge or the attorneys should conduct the questioning of prospective jurors. In some American jurisdictions, voir dire is controlled exclusively by the judge while, in others, attorneys conduct some or all of the questioning of the jury panel (Bermant, 1977; Van Dyke, 1977). Many attorneys (e.g., Begam, 1977) argue that lawyers should conduct the questioning and should be permitted wide latitude in their inquiries. They maintain that unfettered adversary questioning by attorneys during voir dire will be most successful in uncovering juror biases. They point out that the judge's status may evoke socially desirable responses from prospective jurors; and that judges will ask leading questions, indicate proper replies, and fail to probe further in response to suggestive answers. Judges counter these claims (e.g., Stanley, 1977) by arguing that the presence of two adversary advocates prevents judicial questioning from being perfunctory, and that jurors are not so overawed by judges that they would violate their oaths to answer voir dire questions truthfully.

Another way in which voir dire may vary is in the scope of the questioning of prospective jurors. Depending upon the nature of the case and the trial judge's

discretion, the pre-trial examination of jurors may be restricted to relatively narrow topics (e.g., age, occupation, knowledge of the case and trial participants) or may include more expansive and probing questions about a potential juror's attitudes, experiences, and preconceptions about a case. The extended voir dire which characterizes many trials with political and racial overtones has created debate about the appropriateness of intensive voir dire questioning. While Bush (1976), for example, has argued that extensive questioning is the best means of discovering juror prejudices, others claim that its chief virtue is to allow attorneys to abuse the voir dire.

The jury panel may also be questioned as a group, or each individual may be questioned separately in or out of the presence of other jury panel members. While group questioning has the clear time advantage, it has been argued that panel members learn the 'correct' answers during other jurors' questioning, and that their subsequent answers are meaningless. Additional negative effects of group voir dire have been documented by Haney (1980).

All these procedural variations create tremendous differences in the time it takes to complete the voir dire process. A report of voir dire times for a sample of 15 USA cities gave the overall average for these cities as approximately two hours for criminal trials and one hour for civil cases, but the range was most striking. The average voir dire time varied from 18 minutes in one jurisdiction to 8.8 hours in another ('Center for Jury Studies Newsletter', 1979). And in trials where there has been massive pre-trial publicity, where the death penalty is a possibility, or where there are political or racial overtones, the jury selection can take weeks or months. A recent instance which the 'Daily Telegraph' (Brodie, 1982) cited as demonstrating the superiority of the British jury selection system was the heavily publicized case in Los Angeles of the 'Hillside Strangler'. Jury selection in the case took 49 court days.

In some political trials, even more information has been gleaned to assist attorneys for the defence through the use of 'scientific' or 'systematic' jury selection. The techniques of systematic jury selection were pioneered in the 1972 trial of the Berrigan brothers and others on charges of conspiracy to raid draft boards, blow up heating tunnels in Washington, DC, and kidnap the Secretary of State, Henry Kissinger. A group of social scientists, collaborating with defence attorneys, conducted community surveys to determine the demographic characteristics of people favourable and opposed to the defendants, constructed 'ideal juror' profiles, set up information networks to obtain data about the members of the jury panel, and observed the voir dire questioning period in court. The defence attorneys thus had a considerable amount of information on which to exercise their challenges (Schulman et al, 1973).

These techniques have since been used in a number of celebrated American cases (Berk, 1976; Christie, 1976; Tapp & Kenniston, 1976; Zeisel & Diamond, 1976; McConahay, Mullin & Frederick, 1977). The practice of scientific jury selection has been criticized on a number of grounds. Several social scientists have pointed out that its effectiveness in securing a more desirable jury has not been established (Saks, 1976a, 1976b; Vidmar, 1976; Suggs & Sales, 1978). A further problem is the ethicality of employing such procedures, which may make a spectacle of the trial and give the impression, rightly or wrongly, that the jury is rigged. The reader is referred to Berk, Hennessy and Swan (1977), Etzioni (1974), and Saks (1976a, 1976b) for discussion of these issues.

While there is a wide range to the information available about prospective jurors in different USA jurisdictions and different cases, even in those

jurisdictions where the voir dire is most limited, more information about jurors is available than in almost any case tried in Britain.

ALTERING THE COMPOSITION OF THE JURY

Britain

In Britain there are three ways in which barristers may attempt to alter the composition of the jury. First of all, both sides have the right to challenge prospective jurors for cause. Second, the defence (but not the Crown) may challenge up to three jurors peremptorily, without providing a reason. Finally, the Crown (but not the defence) may ask prospective jurors to 'stand by for the Crown'. The individual must stand by until the jury is selected or the panel is exhausted, in which case he or she may be eligible again. The Crown is not required to show cause for standing jurors by, so that the stand by is functionally equivalent to the peremptory challenge. The little research which has been conducted on these three ways of altering the composition of the British jury indicates that these methods are used by barristers only in a minority of cases. Let us consider each of these methods in turn.

Challenges for cause may be successful if it can be demonstrated that jurors are so biased that they could not be impartial in hearing the evidence, if they have a specific interest in or connection with the case, or if they do not meet the qualifications for jury service. However, the ability of barristers to develop this sort of information about jury panel members is severely limited, since the barrister has no right to question a juror in court until a prima facie case for a challenge is provided by other evidence (Devlin, 1956; Cornish, 1968). The difficulties of successfully establishing a juror's bias under the British system have made the challenge for cause extremely rare. Devlin (1956), for example, has described the challenge for cause as obsolescent, and another judge has commented succinctly: 'I have never seen this done' (Clarke, 1975, p. 47).

Peremptory challenges, which may be exercised by defence barristers without providing reasons, are exercised more frequently. The number of peremptory challenges had been seven until it was reduced to three by the Criminal Law Act of 1977.

The data available on the defence's exercise of peremptory challenges in Britain indicate that the peremptory is used in only a minority of trials. The Report of the Departmental Committee on Jury Service (1965) provided some information about the frequency of peremptory challenges in Central Criminal Court and London Sessions during a three-month period in 1964. In 341 jury trials in these two jurisdictions, challenges were made in only 24 trials (7 per cent of all cases) for a total of 50 challenges. More recently, Baldwin and McConville (1979, 1980) report that in their 1975 study of 370 defendants' trials in Birmingham, defence barristers made a total of 101 challenges, or an average of approximately one challenge for every four defendants.

That the use of peremptory challenges by British barristers has increased, especially in the London area, is suggested by a letter to 'The Times' by Judge Gilbert F. Leslie (1982). He reports that in approximately 30 years' experience at the Bar and on the Bench in the North-Eastern Circuit (1932-1962 less the war years) he never saw a juror challenged and heard of only one case in which it had been

done. However, during his time on the bench in London (1965-1980), he observes that challenges were 'common', and 'are usually made because defending counsel thinks that the juror may be intelligent or because the juror is white or a woman' (p. 5).

A 1976 Metropolitan Police Force survey of the exercise of peremptory challenges, cited by Baldwin and McConville (1979), bears out at least some of Judge Leslie's impressions. In 341 trials heard during two months of 1976 in the Old Bailey and Inner London Crown Court, almost a third of the defendants exercised their right to challenge, and 19 used all seven of their challenges.

In a similar vein, in several recent and heavily publicized cases involving multiple defendants, barristers have exercised many if not all of their challenges. For example, in one case involving 15 black youths as defendants, 37 jurors were stood down initially. When the process of jury selection had to be repeated because one of the selected jurors revealed she was related to a defence barrister, there were 26 objections before the jury was chosen (Shirley, 1982). (This might testify to the inefficacy of British jury selection procedures in eliminating jurors who have a relationship with people or issues in the case. Questions about associations with attorneys in the case are common during voir dire in the United States. If this trial had occurred in the United States, in all probability this woman would have been excused by the judge during voir dire.) Similarly, in a trial of 12 Asian youths for making explosive substances, defence barristers exercised all 36 of their challenges during jury selection (Pithers, 1982b). Thus the notion that British barristers only rarely exercise peremptories is probably an outdated one.

While, as we noted, the Crown has no right of peremptory challenge, the Crown possesses its functional equivalent in the right to stand jurors by for the Crown until the panel is depleted. Compared with the three peremptory challenges allotted to the defence, the stand by confers substantially greater power to the Crown to alter the composition of the jury. If the composition of the jury is an important determinant of its verdict, then the stand by provides theoretically a significant advantage to the Crown.

It is therefore of great interest to know exactly how often and under what circumstances the right to stand by jurors is exercised. Historically, there are many instances in which the Crown has been accused of jury packing through the mechanism of standing by prospective jurors. For example, McEldowney (1979) reports that in the nineteenth century the prosecuting attorneys in Ireland sometimes used their power to stand by jurors to eliminate Catholics from juries. Cornish (1968) describes similar experiences in the English system. In the only systematically collected information on the exercise of the stand by, Baldwin and McConville (1979, 1980) report that in trials of 370 defendants in Birmingham courts, the Crown stood by a total of 13 prospective jurors. While the number is small, the stand by may be employed most often in highly politicized cases where the propriety of its use will be questioned. For example, in the 1972 trial of suspected Irish Republican Army members, the Crown stood by six skilled labourers, for which it was roundly denounced (Harman & Griffith, 1979).

USA

The two methods used to alter the jury's composition in the United States are the challenge for cause and the peremptory challenge, both of which are available to defence and prosecuting attorneys. The use of these challenges is much more frequent in the USA than in Britain.

During the voir dire, responses or information provided by a prospective juror may convince the trial judge that the individual could not be impartial in the case. In such an instance, the judge will dismiss the person for cause. The criteria judges use in excusing jurors for cause has never been studied, but it is obvious that differentiating biased and unbiased individuals is a difficult task even in the psychologist's laboratory, let alone in the courtroom. The courts have often relied on a prospective juror's admission of bias as the criterion for a successful challenge for cause. Indeed, even jurors who admit their biases but state that they could set these biases aside and decide the case before them fairly would likely survive a challenge for cause.

There is almost no research on the incidence of such challenges, nor on the judicial decision-making process involved in it. One three-year study of New Mexico courts (Van Dyke, 1977) indicated that 5.2 per cent of prospective jurors were excused for cause. If this figure is a reliable indication of the percentage of jurors excused for cause in other jurisdictions, it would be of interest to know more about the process that eliminates one in 20 jurors from service.

The most widely employed method of eliminating people from the jury in the USA is the peremptory challenge. Both defence and prosecuting attorneys are assigned a set number of peremptory challenges, the quantity depending on the type of crime, the number of defendants, and the jurisdiction. For example, in the federal courts in felony cases, each side is given five peremptory challenges, while in misdemeanour cases only two challenges each are provided. In the state courts in felony cases, the two sides are most frequently given six challenges each, but the range is from 3 to 20. The number of peremptories allotted to prosecution and defence is often equal, but if there is a difference it will be in favour of the defence (Van Dyke, 1977).

There has been little systematic study of the exercise of peremptories, but the little that is available indicates that attorneys use their peremptories with some frequency. In one three-year study of New Mexico courts, 7.4 per cent of jury panel members were challenged peremptorily by the prosecution, while 22.7 per cent of prospective jurors were challenged by the defence (Van Dyke, 1977).

The sharpest criticism over the exercise of peremptory challenges has concerned the use of these challenges by prosecutors to eliminate members of racial and ethnic groups from juries (Kuhn, 1968). This issue was raised in a famous American case, Swain v. Alabama (1965), where a black man was convicted and sentenced to death for rape. While eight blacks were on the jury panel, two were excused from service and the other six were challenged peremptorily by the prosecutor. A number of other instances of the prosecution's use of peremptories to eliminate racial groups from jury service have been documented (Van Dyke, 1977).

PSYCHOLOGICAL ISSUES IN JURY SELECTION

While a full treatment is beyond the scope of this paper, it is interesting to speculate about why Britain and the United States have developed such divergent jury selection practices. In particular, why should jury selection procedures be so much more expanded in the United States? Cornish (1968) points out that, in America, juries have been provided with greater powers, so that the composition of the jury has assumed greater importance. Marshall (1975) argues that a number of constitutional and cultural differences between the two countries may help to explain the greater emphasis the United States places on jury selection. He notes

that the judicial system in Britain is characterized by a lack of general legal guarantees of due process and equal protection, while the right to trial by an impartial jury is enshrined in the US Constitution. Furthermore, he maintains that, in the past, racial and religious differences in Britain have not been as salient in the trials of criminal cases as in the United States.

Another difference between the countries is the freedom accorded to the press to report matters which may eventually be tried in court. In the United States, great value has been placed on freedom of the press. As a consequence, prospective jurors in America are often exposed to a wide range of information about a case before being called to sit as jurors. In contrast, the strict guidelines specified in the Contempt of Court Act (Young, 1981) prohibit all but the barest reporting of matters pertaining to trials in Britain. British jurors are as a rule unlikely to have been exposed to prejudicial pre-trial publicity, which lessens the need for scrutiny of jurors' attitudes.

The comparative review of jury selection practices in Britain and the USA has shown a similar adherence to the notion of the representative jury, but greater emphasis on the in-court selection of the jury in the United States, with more information about prospective jurors developed during voir dire and more frequent attempts by attorneys to change the composition of the jury through challenges. A number of interesting psychological questions is provoked by juxtaposing these divergent practices. Given that attorneys attempt more strenuously to alter the composition of the jury in the USA, just how important is the make-up of the jury in determining its verdict? What type of information is most predictive of jurors' decisions? How effective are attorneys in picking a sympathetic jury? Does the use of different procedures enable lawyers to exercise their challenges more effectively? Finally, do different methods for selecting jurors have broader impact on the jurors themselves and on perceptions of the legitimacy of the trial? These issues are important ones not only for an international comparison but also for their centrality in the ongoing debates in both countries about the desirability of different jury selection methods.

Importance of Jury Composition

The key assumption underlying the whole process of jury selection is that individual differences will lead jurors to perceive and decide cases differently. It is obvious from looking at the typical variability in experimental simulation studies and in real juries (e.g., most juries' first ballots are not unanimous; Kalven & Zeisel, 1966) that people do differ to some degree in their perceptions and decisions about trials. Given this fact, are there identifiable personal characteristics such as demographic data or attitudes that are associated in a regular and systematic way with differences in reactions to trials?

Social psychologists have examined this question through the conduct of a considerable number of jury simulation studies. It would be redundant to review that research here, since comprehensive surveys are available (Davis, Bray & Holt, 1977; Saks & Hastie, 1978; Nemeth, 1981; see also Sealy, 1981). In these studies, personality and demographic variables such as age, gender, race, education, previous jury service, authoritarianism, and moral reasoning ability have all been found to be significantly related to verdicts. However, the manner in which any one of these characteristics affects decision-making differs across types of cases and studies. For example, while a majority of studies shows no difference between men and women

in juror decision-making, a few studies report women to be more defence oriented, while studies involving the crime of rape have demonstrated a consistent tendency for women to be more prosecution prone (Hans, 1982).

Individual characteristics showing a statistically significant difference in simulation studies may still be relatively unimportant in the overall determination of verdicts. Several researchers have addressed this point by obtaining demographic and attitudinal information from subjects and then attempting to predict their decisions in simulated cases. For example, Penrod (1980) collected demographic and attitudinal data from a heterogeneous sample of 367 subjects who subsequently rendered verdicts in four different types of cases. He then employed regression analyses to determine the degree to which decisions in the four cases could be predicted from jurors' personal characteristics. The results were striking. The regression models could account for only 5 to 16 per cent of the variance, depending on the case. Out of 48 correlations between attitude variables and verdict preferences, seven were statistically significant. The highest correlation, just 0.26, was between answers to a question tapping attitudes towards rape and verdicts in the rape case. Dashing the hopes of those looking for the prosecution-prone or defence-oriented individual, intercorrelations among verdicts in the four cases were all quite low. Indeed, the strongest relationship was a negative correlation of -0.13 between verdicts in the rape and murder cases.

In a similar vein, Hepburn (1980) correlated simulated jurors' demographic and attitudinal characteristics with their verdicts in a felony-murder case. His study, too, demonstrated only low to moderate correlations between these variables. Nine demographic predictors accounted for 8 per cent of the variance, while attitudes towards the police and punishment separately accounted for under 10 per cent of the variability in decisions.

A potentially more productive strategy may be to examine more specifically the relationship between case characteristics, attitudes towards the case, and personality-demographic variables. This orientation is suggested by the bulk of social psychology research on attitudes and behaviour (e.g., Fishbein & Ajzen, 1975), indicating that greater specificity typically improves prediction. Just such an approach was taken by Feild (1978) in his experimental study of decisions in rape trials. He systematically varied a number of case factors (such as race of the defendant, sexual experience of the victim, precipitory versus non-precipitory type of rape) in versions of rape cases presented to 896 adult subjects. He obtained demographic information and tapped attitudes towards rape by means of a questionnaire. He found only negligible correlations between case characteristic and demographic dimensions and simulated jurors' responses, but the relationship between attitudes towards rape and case judgements was stronger. The largest multiple correlation, with eight attitudinal predictors, was 0.51. Taken in the context of other studies showing only weak relationships among variables, this result suggests that, in line with psychological research on attitudes and behaviour, case-specific attitudinal questions are the best predictors of jurors' decisions. However, it must be mentioned that in contrast to the Hepburn and Penrod studies, Feild correlated attitudes not with jurors' verdicts but rather with their recommendations for prison sentences, which may have contributed to the higher correlations.

A final tactic employed by researchers to examine the effects of personal characteristics on jurors' verdicts has been to relate jury composition to the decisions reached by real juries. In Baldwin and McConville's (1979, 1980) study of Birmingham Crown Court juries, they collected background information on 3912 jurors (members of 326 juries) who heard cases over the 21-month study period. They

examined the pattern of verdicts returned by juries varying in composition along the dimensions of age, gender, and occupation, but found no discernible associations with jury verdicts. Similarly, a study of acquittal rates in British Crown Courts before and after the qualifications for jury service were revised revealed no detectable differences as a function of the reform (Zander, 1974, 1975).

While these studies suggest that the impact of demographic variables on jury decision-making is unimportant, it should be pointed out that the power of the real world studies to detect effects is likely to be quite weak. As Lempert (1975) has argued persuasively in another context, even when a variable undoubtedly influences jury verdicts in some cases, its effects are likely to be so diluted in real world research studies as to appear inconsequential.

Another issue involves the relationship between individual differences and behaviour in the jury room, since one's contribution to the final verdict depends upon effectively presenting one's perspective to other members of the jury. Consider those studies of jury behaviour which show that traditional status inequalities between the sexes are carried into the jury room, with men chosen more frequently as leaders, participating more in deliberations, and perceived as more influential (Hans, 1982; Stasser, Kerr & Bray, 1982). All these differences may impede women's performance on the jury and may help to explain why their presence has no detectable impact on verdicts. The more general point is that in calculating the effects of individual variations in verdict preferences one must necessarily take into account how those differences will be diluted, reinforced, or transformed in the social environment of jury deliberation and decision-making.

In summary, while individual characteristics may affect juror decision-making, their impact is low to moderate and may differ from case to case. In real world and jury simulation studies alike, personality and demographic variables are found to be weakly or inconsistently related to jury decision-making. As one would expect from psychological research, the relationships between attitudes towards cases and juror decisions are somewhat stronger. Even under the best of circumstances, however, it is difficult to predict accurately jurors' verdicts from knowledge of their personal characteristics.

The research indicates that lawyers who rely exclusively on demographic variables such as age, race, and gender to alter the composition of the jury are in all probability engaging in a fruitless endeavour. Yet if they wish to exercise their challenges, British barristers are forced to rely on such personal characteristics. A similar situation confronts American attorneys in jurisdictions with limited voir dire. It is only in those situations where lawyers gain information about case-specific attitudes and experiences of prospective jurors, the sort of information developed during extended voir dire, that attorney judgements about jurors' biases are likely to be reliable.

Before leaving the topic of jury composition, it is worth drawing attention to the assumption, widely shared in both Britain and America, that representative juries possess superior fact-finding abilities. Proponents of representative juries maintain that a jury composed of individuals with varied perspectives will promote robust deliberation, the cancellation of opposing biases, and better fact finding. These arguments are largely untested, although studies in group decision-making do indicate that heterogeneous groups are frequently better at problem solving than homogeneous groups (Hoffman, 1965). Research on these psychological assumptions would be of value.

Attorney Effectiveness

While the psychological research suggests, especially under conditions of limited information about prospective jurors, that attorneys are likely to be only minimally effective in picking a sympathetic jury, lawyers themselves will maintain that they have won or lost cases by choosing the jury particularly brilliantly or badly. Few systematically collected data concerning attorney effectiveness are available, however. In Broeder's (1965) American study of the voir dire process in 23 jury trials, examples from post-trial interviews with jurors demonstrated that the voir dire and jury selection process were sometimes ineffective in weeding out biased persons from the jury. Blauner (1972), on the other hand, provides illustrations of the considerable ability of the defence attorney in the Huey Newton murder trial in uncovering hidden prejudices in prospective jurors. In Broeder's research, the voir dire was perfunctory, while the Huey Newton voir dire constituted one of the first times in which extensive voir dire questioning was permitted in an American court. Although the evidence about differential attorney effectiveness is only anecdotal, the pattern supports the conclusion advanced earlier that extended voir dire will be most useful in discovering juror bias. Correspondingly, Nietzel and Dillehay (1982) have found, in their study of variation in voir dire practices in death penalty cases, that defence attorneys' challenges for cause are most often successful when voir dire is conducted with jurors individually and out of the presence of other jury panel members in contrast to en masse questioning of the panel.

A recent and inventive study by Zeisel and Diamond (1978) is the only one which provides direct information about attorney effectiveness over a number of cases. Usually, of course, it is impossible to know how successful a lawyer is in exercising challenges, since prospective jurors who are challenged are removed from the jury and do not render a decision in the case. In Zeisel and Diamond's experiment, however, they arranged for the challenged jurors in 12 cases to sit in court during the trial and vote at its conclusion. Information about the challenged jurors' votes, along with post-trial interviews with jurors to obtain the first ballot votes of the real jury, allowed Zeisel and Diamond to reconstruct what the first ballot vote of the jury would have been without any peremptory challenges. This comparison of the real and reconstructed juries' first ballot votes allowed them to estimate the effectiveness of the attorneys' exercise of their peremptories. Zeisel and Diamond's analysis indicated that in two or three of the 12 trials, the differences between first ballot votes were large enough to have produced different verdicts. Thus, in two or three instances, attorneys' challenges appeared to be effective. Zeisel and Diamond also calculated an attorney performance index, based on the challenged jurors' votes, which revealed great variation in lawyers' abilities to eliminate jurors who were biased against their case. In addition, the researchers in each case obtained decisions from 12 randomly selected jury panel members who had not undergone voir dire, a group they christened the 'English jury'. Members of the English juries were more likely to convict the defendant than members of the real juries, but it is unclear whether their conviction proneness was due to attorney skill, the fact that they had not been through the voir dire process, or the fact that they were not in reality deciding someone's fate.

As we might have expected, the research on attorney effectiveness, while not extensive, indicates that especially where attorneys operate under conditions of limited information about jury panel members their effectiveness is only marginal. This suggests that the greater use of challenges in the USA compared with Britain may actually make little difference in the eventual outcome of the case.

Other Effects of Jury Selection Procedures

In addition to its assistance to lawyers in choosing a sympathetic jury, the manner in which jury selection is conducted may have a psychological impact on the jurors themselves and may affect perceptions of the legitimacy of the jury and its verdict.

Observers of jury selection in the United States have frequently noted that the voir dire process serves a variety of functions beyond the detection of bias in prospective jurors. Attorneys may use the voir dire to cultivate rapport with jurors, to develop trial strategy, to forewarn jurors about negative evidence in the case, and to educate the jurors about important legal issues (Bailey & Rothblatt, 1971). Balch et al (1976) and Broeder (1965) have documented the prevalence of educative and instructional strategies of lawyers during voir dire examinations. McConahay, Mullin and Frederick (1977) speculate that the scientific jury selection techniques they employed in the Joan Little trial may have had a placebo effect on jurors. Because the jurors had been chosen by defence experts, they may have felt more favourable towards the defence, and the extensive voir dire may have indoctrinated jurors about being impartial.

More deleterious effects of a pre-trial question period have been reported by Haney (1980), who used simulation methodology to explore the effects of the death qualification process on jurors. In capital cases in the USA, the voir dire includes a series of questions designed to determine whether jurors have such strong feelings about the death penalty that they could not be fair and impartial jurors. Haney presented subjects with videotapes depicting jury selection in a first-degree murder case. Subjects whose videotape included a series of questions on the death penalty were much more prosecution prone in their perceptions of and judgements about the case than subjects who observed a jury selection videotape without a death qualification segment. Whether jurors make similar negative inferences from extended voir dire, or whether the voir dire is effective in educating them about their roles, are questions awaiting systematic empirical investigation.

A final point to which we have alluded previously is that jury selection practices may affect the legitimacy of the jury. It is possible, especially in trials where the likelihood of juror bias is great, that extensive jury selection procedures (involving considerable in-depth questioning of jury panel members and liberal use of challenges for cause) will reassure the court, the defendant, and the public that every attempt has been made to secure an impartial jury. Alternatively, such procedures might undermine the legitimacy of the jury and its verdict (e.g., see Wellman & Fitzgerald's 1978 discussion of the prosecution's advantage in the voir dire process in political trials). We have already noted the limited tolerance in Britain for questioning the jury panel and for tampering with the composition of the jury. Indeed, there have even been calls for eradicating the defence's limited right of peremptory challenge in Britain ('The Times', 1977; Sabin, 1982). Others have argued convincingly that the Crown's virtually unlimited power to stand by jurors confers an unfair advantage to the state which contradicts the idea of trial by an impartial jury; such a power must be curtailed to preserve the legitimacy of jury trial (Thompson, 1978; Harman & Griffith, 1979; McEldowney, 1979). In the USA, the elimination of minority group members through the prosecutors' use of peremptory challenges has also detrimentally affected perceptions of the trial (Note: the case for black juries, 1970). Finally, objections to scientific jury selection have included feelings that it made the trial a sham, provoked perceptions that the jury was rigged, and threatened the validity of any verdict reached by a scientifically

selected jury (Etzioni, 1974; Berk, Hennessy & Swan, 1977). It would be of interest to examine how perceptions of the trial are affected by variation in the extensiveness of jury selection, for clearly these issues of legitimacy are important considerations in jury selection reform.

CONCLUSION

Our psychological perspective on jury selection in two countries indicates that American attorneys have an important advantage over British barristers in the type of information about jurors that can be obtained during voir dire questioning in American courts. Research on the relationship between demographic characteristics and juror verdicts, coupled with British jury selection practices, suggests that British lawyers will rarely if ever have enough data about prospective jurors to exercise their challenges (or stand bys) effectively. Even in the USA, cases with extended voir dire are likely to be the only ones in which solid predictive data will be elicited. Studies offering proof of minimal attorney effectiveness in the exercise of peremptory challenges suggest that the typical British jury which is randomly selected from the jury panel may be essentially the same as the typical American jury chosen with voir dire and peremptory challenges by prosecution and defence attorneys.

In this light it will be reassuring to note the evidence showing that, overall, jury composition is not the important determinant of the jury's verdict that folklore implies. In the vast majority of trials the jury's verdict will be identical to the one the judge would have reached (Kalven & Zeisel, 1966). Nevertheless, in cases which are close or which involve important political and social issues likely to polarize jurors, the selection of the jury, and the methods involved in selection, may assume greater importance. Our survey of psychological issues in jury selection also highlights what may well be the most critical feature of the selection process: its psychological impact on the public and on the jurors themselves.

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