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# How Social Influence Factors Might Impact the Jury

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Psychology 6402: Group Processes

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When an injustice has occurred in society, the questions and concerns surrounding the injustice will be considered and assessed by various criminal justice members (e.g., police officers, lawyers, judges). In modern day, the due process of law is applied in order to evaluate the legitimacy of the evidence related to the misconduct, and to also consider all of the legal implications of the behaviour (i.e., whether consequences or punishment is required, and to what severity). Canadian courts hear many cases related to both civil and criminal conduct, and depending on the type of offence (i.e., summary vs. indictable), the defendant is sometimes given the option of the trial being heard by a judge alone, or by a jury (Pozzulo, Bennell, & Forth, 2012). However, trial by jury has not always been part of the criminal justice system.

## A Brief History of Pre- Jury Justice

Historically, legal disputes were handled through much different procedures than we might be familiar with today. During the Middle Ages, for example, one approach to dealing with a dispute was to have a 'trial by wager of battle'. This method involved having the two opposing parties participate in a formal duel to the death, with the underlying assumption that God would ultimately decide whom was truly correct in the feud by letting that party survive the duel (Gordon, 2014; Vidmar & Hans, 2007). Another approach that has been documented is known as a 'trial by ordeal'. One example of this type of justice involved binding the defendant's hands and feet together, and then submerging the person into a large body of water. The conviction decision would be dictated by one of two possible outcomes: If the person sunk to the bottom of the body of water, then the decision would be that he or she is found to be innocent. In contrast, if the person floated above the water, then the decision would be that the person is guilty of the charges (Gordon, 2014; Leeson, 2012; Vidmar & Hans, 2007). These medieval approaches to serving justice were mainly built upon the religious superstitions subscribed to during that period (Leeson, 2012).

According to Delvin (1956), King Henry II and Pope Innocent III are credited for introducing and implementing the jury system to assist with judging legal disputes. The original purpose of the jury during the King's reign was to help inform him of what legal judgments to render on various disputes. Typically, these disputes were about land ownership, and the jury would be mostly comprised of landowners who were well informed about the facts pertaining around the land dispute (Delvin, 1956). In fact, some of characteristics of

the modern day jury can be traced back to the time of King Henry II such as, the idea that a jury should be made up of 12 persons; the fact that the jury is instructed by the judge (i.e., the King) and has no power on its own; and that the jury is not required to give reasons for their decision (Delvin, 1956). Although 'trials by ordeal' and others similar practices likely continued even after the King's proposed changes, the introduction of having a group of evaluators (i.e., the jury) added to the justice system process was indeed an improvement on the conviction practices conducted in the Middle Ages. As we know today, juries are an intricate part of the criminal justice system.

## Support and Concern for the Modern Day Jury

By definition, a jury is a group comprised of the defendant's peers and should consist of a reasonable, and representative, cross-sample of the community (Gordon, 2014). For example, if the person on trial is a 23-year-old single mother, Latino female from a middle-class urban centre, then the jury should be representative of this person by containing other young Latino women. Furthermore, other members of the jury should be comprised of people representative of the defendant's particular urban community (e.g., young mothers, married/unmarried persons, white/blue collar workers). If, in this example, the jury consisted of all 75-year-old white men, then this jury would be an illustration of a non-representative jury.

Many commentators and researchers interested in the study of juries have suggested that employing a group of people (as compared to a single individual), to make a verdict decision is a favourable way to ensure that all aspects of the legal case have been considered. Those in favour of trial by jury suggest that as the size of a decision-making body increases, there is a greater likelihood that the majority of the group will produce a correct and fair judgment of the case facts (Ladha, 1995; Surowiecki, 2005). Others propose that a group's deliberations may also increase the chances that the evidence and arguments presented in court will be better recalled, and be given more consideration than if the matter is just reviewed by a single individual (Pritchard & Keenan, 2002). Furthermore, a having a group of randomly selected people is believed to produce diversity among the jurors by bringing a variety of personalities, experiences, and attitudes to the decision-making process (Baddeley & Parkinson, 2012).

This assortment of people on the jury is also thought to reduce any preceding biases e.g., interest, specific, generic

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and/or normative prejudices (see Vidmar & Schuller, 2001) jurors may have (Baddeley & Parkinson, 2012). Moreover, diversity on a jury is thought to also lead to more thorough debate and evaluation of the facts (Kerr, MacCoun, & Kramer, 1996). Lastly, some researchers have put forth the notion that a group of the defendant's peers might be better able to evaluate the defendant than a legal professional who is unfamiliar with the defendant's community (Baddeley & Parkinson, 2012). A jury of peers is also thought to be protected against any political or elitism influences that some criminal justice members may be partial to (Cahoy & Ding, 2005). As pointed out by Gordon (2014), an American case (e.g., *Duncan v. Louisiana*, 1968) summarized the purpose of a jury quite well as a way of "providing an accused with the right to be tried by a jury of his peers [in order to give him] an inestimable safeguard against the corrupt or overzealous prosecutor, and against the compliant, biased, or eccentric judge" (p. 421).

Indeed, as exemplified above, there appears to be some solid logic for supporting the use of a jury within the criminal justice system; however, there are some recognize problems with laypersons making up the composition of the jury, as well. For example, most people who are summoned for jury duty have no prior experience of being on a jury, nor have extensive experience making decisions about complex issues with a group of strangers (Henningesen, Cruz, & Miller, 2000). Although the judge will assist the jury members with understanding the parameters of the law and will provide guidance on the judgment making process, the discussions, debates, deliberations, and final decision (i.e., the verdict) about the defendant's fate is ultimately in the hands of the, likely novitiate, jury members.

Beyond the lack of experience concerns, there are also elements related to group dynamics that might negatively impact the jury's deliberations. Specifically, concepts related to social influence have the power to affect an individual's (or group's) evaluation process, sometimes without the people involved even realizing it. In order to understand how these concepts could play out during the jury's decision-making process, it might be important to briefly review how jury deliberations are believed to normally occur.

According to Brewer and Williams (2005), the jury's deliberation process typically moves through three phases. First, the orientation stage generally involves electing a foreperson, reviewing the deliberation procedures, and raising any general trial issues together as a group. The second phase, and usually the longest occurring, is known as the open conflict stage. This is when the jurors discuss and debate the information and evidence presented during the trial, and also attempt to persuade each other into reaching a final unanimous verdict. After the final group verdict has been decided, the jury finishes deliberations through the finally phase known as the reconciliation stage. Simply put,

this last stage involves ensuring that all members are satisfied with the final decision, and seeks to fix any hurt feelings or attacks that might have occurred during the debates and discussions (Brewer & Williams, 2005). Some research has pointed out that the chances are about 2 in 3 that jurors will disagree on the verdict, yet about 95% of juries emerge with a consensus (Kalven & Zeisel, 1966). Thus, this fact can lend support to the suggestion that social influence factors might be occurring during the jury's deliberations in order to change some of the jurors' decisions. In all likelihood, these influences and changes probably occurred during the open conflict stage.

### **Concepts of Social Influence**

Social influence can be thought of as the change in a person's attitude, belief, or behaviour that is triggered by the words, actions, or presence of another person(s) (Bowser, 2013; Forsyth, 2009). Group dynamic researchers suggest that social influence can be broken down into two main subgroups. *Majority influence* is when the larger portion of the group places pressure onto an individual member, or small portion of the group, in order to get the minority party to change their opinion, and accept the consensus of the larger group (Forsyth, 2009). In contrast, *minority influence* is simply pressure being exerted from the opposite direction. In other words, a single member or smaller portions of the group places pressure onto the larger portion in attempt to have the majority's opinions conform to those of the minority (Forsyth, 2009). Being given the task of deciding a person's fate is a significant responsibility and should not be taken lightly; most jurors surely put forth their best effort in order to fulfill their objective duty as a juror. The reality, however, is that majority or minority influences from within the group have the potential to subjectively affect how the juror(s) will respond and behave during deliberations.

Within both of these subgroups are multiple sources of group influence. Each source can lead an individual to conform to what is perceived to be normal, as dictated to the group. The first source is known as *informational influence*. Forsyth (2009) defines this source as the "interpersonal processes that promote change by challenging the correctness of group members' beliefs or appropriateness of their behaviour directly or indirectly" (p. 196). In other words, information that one receives, or believes they are receiving, from other group members could lead an individual to change their opinion or viewpoint on the issue being considered. Informational influence is believed to work largely based on the principles of social comparison theory (e.g., Festinger, 1954). This may be best illustrated by considering the point of view(s) of a jury member(s) when conducting a poll of each juror's individual verdict. This notion is known as the straw man poll, and is used in order to see what direction the jury is leaning toward in their collective decision (Forsyth, 2009).

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Consider the example that an original straw man poll might have suggested that the jury stood at a 7-5 vote in favour of a not-guilty verdict. After some deliberations and then taking a new poll, it might now be revealed that the jury currently stands at a 10-2 vote in favour of not-guilty. Informational influence can be illustrated in two different ways through this example. Firstly, the deliberations might have persuaded three jury members into changing their votes, because another juror's expressed view on the evidence introduced some new information or concepts that the three jurors had not considered before. Thus, this newly introduced information has impacted their personal viewpoints and influenced these three jurors to change their vote. Secondly, the new poll itself might now become a source of informational influence for the other remaining two jurors in favour of the guilty verdict. Given that the majority of the group now appears to be in favour of a not-guilty verdict, combined with the fact that three others have changed their votes, this might suggest to the two remaining jurors that the other ten jury members are aware of something that they are not privy to. This new 10-2 poll now acts as a reference point for the two remaining jurors, and may now influence them to revisit their motivations around their choice of a guilty verdict. If a third poll was later taken and resulted in a 12-0 vote in favour of not-guilty, then observers might conclude that a form of informational influence was a possible driving force that led to the change in verdict.

*Normative influence* is a second source type and is described by Forsyth (2009) as the "personal and interpersonal processes that cause[s] individuals to feel, think, and act in ways that are consistent with social norms, standards and conventions" (p.198) of the group. In other words, individual members can observe the group's norms and will strive to act in ways that are consistent with those norms. When one realizes that they are feeling, thinking, or acting in contrast to the group, this realization may leave the individual feeling isolated socially, and at odds with their own criteria of normality (Forsyth, 2009). Using the same example illustrated above for informational influence, the poll that resulted in a 10-2 vote might now suggest that the groups' norm is believing that the defendant is an innocent person. Thus, the two lone jurors might now feel somewhat anomalous relative to the rest of the group, and will need to revisit their viewpoints to deal with any tension (e.g., cognitive dissonance; Festinger, 1957) they may feel from being the only two that do not fit in with the groups' norms.

Finally, the last source is *interpersonal influence* and is described by Forsyth (2009) as the "social influence that results from other group members selectively encouraging conformity and discouraging, or even punishing, nonconformity" (p. 200). In other words, the out-group minority member(s) becomes the specific target(s) of the in-group majority members, and this focus has the potential to turn negative.

Interpersonal influence tends to be applied when informational or normative influences have failed to change the opinion of the dissenter(s) to align with the group's collective opinion. As a result, the group will begin to focus the bulk of their attention on the dissenting individual(s) in order to bring the rebel's opinion into agreement with the group or until the group decides that this individual will not abandon their opposition (Forsyth, 2009). Continuing with our polling example, we might observe interpersonal influence occurring if the 10 jurors who voted not-guilty started to attack or reject the two jurors who voted for a guilty verdict. In fact, a very similar scenario being described here played out in a study on communication conducted by Schachter (1951).

In his study, Schachter (as cited in Forsyth, 2009) set up discussion groups wherein participants would gather to talk about various important topics of interest. Among the participants were three confederates, and each had a specific role to play in the study: the 'mode' confederate would consistently agree with the majority of the group; the 'slider' confederate would initially disagree with the majority, but eventually agree with the majority of the group as the conversation went on; lastly, the 'deviant' would always differ from the majority. Schachter (1951) measured the communication rate between the group and each confederate, and found that the highest rates of communication occurred between the group and the deviant (as compared to the group communication rates with both the slider, and the mode, separately). Indeed, some groups were even observed to reject the deviant completely when this confederate would not change their disagreeing viewpoint. The findings in Schachter's (1951) study suggest that interpersonal influences might be a tactic used by groups who are involved in crucial discussions, such as juries, in attempt to change the opinions of any dissenters in order to match the collective viewpoint.

### **Additional Empirical Examples related to Social Influence**

In addition to Schachter's (1951) study, aspects of both majority and minority influences and their sources (i.e., informational, normative, and interpersonal) have been empirically observed in some classical research studies. Asch's (1951) famous line study investigated how a majority group could cause an individual to conform to the pressures of the group. The study involved bringing participants into the lab to make comparative judgments about a series of lines displayed on a screen. Each participant was put into a group with other people; however, these 'others' were all confederates in the study. Unknown to the actual participants, the confederates were previously instructed by the experimenter to state the wrong answer on each trial. When an obviously wrong answer given by members of the group, Asch (1951) wanted to know whether the participants would join the group in their incorrect choice, or if the participants would maintain their own obviously correct choice. Indeed, results of the study found that 32% of participants con-

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formed to the social pressures of the group, and changed their decision to be in line with what the other group members had stated. It might be postulated that the participants from the Asch (1951) study relied on some informational and/or normative influences interpreted from the group.

Moscovici and a colleague (1969), on the other hand, felt like Asch (1951) did not consider the option that minority influences can also occur in groups. In their study, Moscovici and Zavalloni (1969) conducted a similar procedure to Asch (1951), but in reverse. Six participants were brought into the lab to judge the colors of various green and blue slides; however, two of these members were confederates for the experimenter. Similar to Asch's (1951) study, the confederates gave wrong answers about the color of the slides (e.g., stating the slide was blue when it was clearly green) and answered consistently (i.e., stating green as the answer 100% of the time) or inconsistently (i.e., sometimes stating blue or sometimes stating green as the answer) on the trials. Similar to Asch's (1951) logic, Moscovici and Zavalloni (1969) wanted to know if the incorrect statements of the minority group (i.e., the two confederates) would influence the majority (i.e., the actual participants). Although much less than those observed in the Asch (1951) study, the results indicated that the minority group did indeed have an effect on the majority group (about 9% of the time), but only when the minority group was consistent in their wrong responses.

### **Social Responses to Social Influence**

Whether consciously aware or not of the various type of influences that might be used in the group setting, researcher also points out that several different social responses might be exhibited by group members undergoing influence pressures. The fact that some of the participants in the above classic studies abandoned their initial judgments, while others maintained their opinions, goes to show that a variety of responses can occur to social influences. According to Forsyth (2009), there are five different types of social responses that might be observed in decision-making groups – and accordingly, could occur during a jury's deliberations.

To illustrate, let's again consider another mock jury example. Let's assume that prior to the jury commencing deliberations, juror #12 has formed his or her verdict decision about each of the charges against the defendant. After some discussion with the other jury members, juror #12 may find him- or herself in a minority position (e.g., finds the defendant guilty on the first charge) relative to the rest of the group (e.g., all others find defendant not-guilty on the first charge). In order to move the deliberations forward to discuss the additional charges, juror #12 may decide to change their outward decision position in order appease the group's majority view; however, juror #12 still privately believes that the defendant should be found guilty for the first charge.

In this mock example, juror #12 has displayed *compliance* towards the group. Although it would appear that this juror publicly agrees with the group he or she is truly in disagreement privately (Forsyth, 2009).

Let's now consider another social response, and assume that during the discussions some other group members presented a solid alternative explanation as to why a not-guilty verdict should be rendered for the first charge. For liberty sake, let's assume that juror #12 had not considered this alternative explanation when forming his or her original verdict decision. If this new information leads juror #12 to abandon his or her original decision and change their opinion to match with that of the group, then this type of social response is known as *conversion*. Indeed, a genuine change of opinion shows that juror #12 agrees with group both publicly and privately (Forsyth, 2009). Of course, these two mock examples are assuming that all of the other jurors have been in agreement together the first charge's verdict since the onset of discussions.

To illustrate the third social response, let's take the perspective of juror #5 (i.e., someone who is in opposition to juror #12's opinions), and assume that this juror is part of the majority group with respect to the verdict decision on the first charge (i.e., he or she has consistently sided with a not-guilty verdict for the first charge). By maintaining agreement on the verdict decision both before and after any jury discussions, juror #5 is displaying the social response of *congruence* within the group. In other words, juror #5 is agreeing with the verdict decision both publicly and privately in a strict sense (Forsyth, 2009).

Using the above mock examples, we have so far seen illustrations for three forms of social responses (e.g., compliance, conversion, and congruence). In all of these response cases, the outcome of each response is agreement with the rest of the group. But what if a juror's final response is in disagreement with the group? Indeed, Forsyth (2009) explains that there are two additional social responses that fit with the latter category.

The first of the dissenting responses is known as *independence*. In this case, the person who chooses to be independent relative to the group may be expressing opinions or judgments that are consistent with their own personal standards. To refer back to the above mock example, perhaps juror #12 made their initial guilty decision due to their own personal convictions, and will now maintain this attitude throughout the whole deliberating process. In effect, an independent disagrees with the group both publicly and privately (Forsyth, 2009). Regardless of what the group says, suggests, or uses to persuade an independent, this person will remain in disagreement with the group at all stages of the deliberations. In the social setting of the jury, an indepen-

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dent response type might lead to a hung jury. In fact, 6% of criminal juries result in a jury unable to reach a unanimous decision (Waters & Hans, 2009).

The final of the five social responses, and second of the dissenting types, is referred to as *anticonformity*. This response can be thought of as simply going against anything that the group recommends. Recall the 'deviant' confederate from the Schachter (1951) study; this confederate would be an example of anticonformity occurring in a group setting. One of the reasons that a juror might take this position during the deliberation process is to ensure that all alternative explanations have been contemplated. In a jury situation, perhaps taking a counter conformity approach is a fail-safe way to ensure all of the evidence is fully and thoroughly considered. In fact, an example of this can be seen from the hero in Reginald Rose's play, *Twelve Angry Men* i.e., the character, 'Juror #8' (Rose & Sergel, 1958). In the play, Juror #8 takes an anticonformist approach relative to the rest of the jury members in order to exhaustively consider other alternative explanations of the crime being considered. As the audience learns toward the end of the play, Juror #8 displayed disagreement with the group publicly, but privately agreed with the group's guilty verdict (Rose & Sergel, 1958). As the play concludes, we see that Juror #8's anticonformity stance was enough for the remaining 11 jurors to thoroughly re-evaluate their verdict decisions and conclude that the defendant was not-guilty. This play also provides many examples of interpersonal influence taking place during the many heated arguments displayed between jury members. Although the play is a fictional work, aspects of the characters might be similar to actual real-life jury members.

### Concluding Thoughts

Findings from many of the previously mentioned classical studies (e.g., Asch, 1951; Moscovici & Zavalloni, 1969; Schachter, 1951) suggest huge implications for the jury setting. In the case of majority influence, a lone juror who feels strongly about an opposing and unpopular viewpoint might become undone and succumb to the social pressures of the group, thus changing their viewpoint and leading to a verdict decision that they do not agree with. Similarly, if a minority group is consistent with presenting their argument to the

group, the unpopular view can emerge as the final decision of the jury as a whole (e.g., *Twelve Angry Men*). As illustrated by the 'deviant', having a difference of opinion relative to the rest of the group can lead to negative reactions and complete rejection of the individual.

Social influence factors play out in many different group settings, and affect people in their decision-making processes. The jury is social setting where group social influences can have a great impact on a defendant's life. Knowing and understanding how group dynamic concepts work, and more importantly, applying them in the jury setting can lead one to protecting themselves from influences that might not allow the completion of a full due diligence legal process. Jury members may make the realization that being in a minority position might actually lend to deeper considerations given to the issues at hand. After all, if you were the person on trial, then you would likely want there to be many views considered rather than just whatever the majority thinks. Of course, dissenting from the group is not usually a popular position to find yourself in, but when a jury's decision has the power to hugely impact the defendant's life (for better or for worse), jury members would do the defendant and themselves justice by noting and learning how social influences might impact them in the group setting. As Rose's play (Rose & Sergel, 1958) indicates, without an anticonformist on the jury, the group might have rendered an incorrect verdict to the fictional defendant. In real life, this wrong decision-making can have dire effects on a person and potentially send an innocent defendant to prison. In fact, a recent study reports that juries have been found to render a wrong verdict in 1 of every 8 cases (Spencer, 2007). Awareness of social influence factors will not necessarily correct any wrong doings by juries, but having an understanding the dynamics related to group processes might lead to some additional insight. Perhaps a simple suggestion that could protect juries from falling victim to social influences is to have the judge speak about the impact of social influence during the instructions given to the jury. The purpose of the criminal justice system is to render just that: justice. Group dynamics and social influences might be able to play a role in insuring that true justice for all is fully exercised. ■

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