

# INTRODUCTION: AN OVERVIEW

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Trial by jury is the most rational and effective method for discovering the truth.

—Sir John Fortescue, *On the Laws and Governance of England*

I consider [trial by jury] as the only anchor, ever yet invented by man, by which a government can be held to the principles of its constitution.

—Thomas Jefferson to Thomas Paine

These statements represent long-held beliefs that trial by jury is the superior method for the resolution of disputes, both between the government and its citizens and between citizens. The jury was deemed so important by the founders of the United States of America that the right to a jury was guaranteed in three of the 10 amendments that constitute the Bill of Rights to the Constitution. Juries serve as an important check against government officials who might try to overreach with their authority (Amar, 1991). For example, the Fifth Amendment provides for grand juries that are drawn from among the citizenry to inquire into charges brought by prosecutors against other citizens and that have the power to determine that there is insufficient evidence for a prosecution to proceed. The criminal jury, a right guaranteed under the Sixth Amendment, has the power to acquit a defendant who they believe is being prosecuted with unreliable or manufactured evidence or to acquit when they believe the law broken is unconstitutional. And the Seventh

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*The Psychology of Juries*, M. B. Kovera (Editor)

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Amendment guarantees the right to a civil jury. Even amendments that do not specifically mention juries implicate them (Amar, 1991). For example, the Fourth Amendment protection against unlawful search and seizure is enforced through juries who are the ultimate arbiters of whether a search was reasonable and lawful. In sum, the jury serves as a powerful mechanism for protecting citizens from improper governmental influence.

Because of the centrality of the jury to many of the protections afforded to U.S. citizens under the Constitution and the Bill of Rights, it is crucial to understand whether the jury functions as it is intended. Are juries fair and impartial? Do they follow the law as it is given to them? Do they properly evaluate the evidence before them? If the answer to these questions is no, then it is also important to evaluate the effectiveness of any safeguards or procedural innovations that might improve the function of the jury.

Perhaps it is not surprising, given the importance that the founders placed on the jury in the U.S. Constitution, that the jury—as it operates in the United States at least—has received considerable scholarly attention, initially from legal scholars but more recently from social scientists. After the publication of Kalven and Zeisel's (1966) *The American Jury*, there was an explosion of research on the jury. The Web of Science Social Science Citation Index database lists over 3,700 articles on the topic of jurors or juries and the PsycINFO database contains abstracts for almost 3,900 articles on the topic. However, as we shall see in one of the chapters to come, the publication rate of jury research has slowed in recent years, at least at one of the major scholarly outlets for this type of research. Indeed, a scan of the reference lists for the chapters contained in this volume suggests that much of the influential work on jury decision making and behavior was conducted decades ago.

Why has the volume of jury research—at least research that has been published in high-quality scholarly outlets—seemingly slowed to a trickle? Some scholars have complained about the variability in the methodological quality of the research produced on jury behavior. Others have bemoaned the seemingly limited impact that this voluminous jury scholarship has had on judicial decision making, raising questions about whether jury scholars are asking important or inconsequential research questions and whether they are using appropriate methods to study jury behavior and decision making. There is no question that to pass muster in the peer-review process it is essential that an investigation tackles important questions using the most appropriate methods for answering those questions.

In the interest of reinvigorating jury scholarship, this volume collects the thoughts of a number of esteemed jury scholars in response to two general questions: What are some important areas of inquiry that have been overlooked by jury researchers, and what methods should researchers rely on when

studying those questions? For anyone interested in how juries make decisions and whether they do so competently, these scholars have provided comprehensive reviews of the literature addressing these questions. For consumers of jury scholarship, including legal practitioners, there are helpful principles for understanding how best to evaluate the quality of jury research. For both the new and more established jury scholar, the authors have also illustrated new areas of inquiry that are ripe for empirical investigation. There are enough novel questions within the covers of this book to keep many laboratories bustling for years to come.

The structure of the book reflects these two motivating questions, with a set of chapters devoted to each question. In Part I (consisting of Chapters 1–6), authors identify important, yet understudied, topics at the intersection of psychology and law, review what research is currently available on the topics, and then suggest new sets of research questions that would advance the field theoretically or practically (and sometimes both). Specifically, the first two chapters suggest new avenues for research that emphasize the importance of studying the jury as a group rather than a collection of individual jurors. In Chapter 1, Lora M. Levett and Dennis Devine—two scholars who have a particular interest in group processes in jury settings—describe a decision-making model that integrates earlier work on group processes in social influence with a psychological model of individual juror decision making (Devine, 2012). The first half of the model describes how jurors use the evidence they hear during trial to create narrative explanations or stories about how trial-related events likely occurred. The second half of the model describes how the jury chooses which of the jurors' stories to endorse. In Chapter 2, cognitive psychologists William Hirst and Charles B. Stone review research that challenges legal assumptions that deliberation serves to correct errors in individual jurors' memories of the trial evidence and the law.

The remaining chapters in Part I each address an important area of inquiry related to jury decision making and functioning that needs further attention from jury scholars. In Chapter 3, Christina A. Studebaker—a respected trial consultant and jury scholar—argues that previous research has neglected an examination of the myriad ways attorneys influence the trial process, consequently influencing juror decisions. The bulk of the chapter provides the reader with many examples of legal practice strategies that are ripe for empirical investigation, reviewing whatever limited research is available and suggesting new avenues for research.

In Chapter 4, Jennifer S. Hunt reviews the existing literature on the effects of race, ethnicity, and culture as they relate to jury decisions and behavior. She proposes a research agenda for studying the effects of race and ethnicity on targets (e.g., defendants, victims) and subjects (i.e., jurors), as well as examining the variability of behavior that occurs within different

racial and ethnic groups and evaluating interventions designed to reduce the racial and ethnic disparities currently manifested in the jury system.

In Chapter 5, two renowned law professors, Jennifer K. Robbennolt and the late Theodore Eisenberg, ask us to consider the benchmarks we are using to evaluate jury competence. Robbennolt and Eisenberg note that although one benchmark for jury competence is whether they arrive at decisions that are similar to those rendered by judges, there are relatively few areas in which researchers have directly compared judge and juror decision making (with the exception of decisions about damage awards in civil cases); the authors call on scholars to rectify this deficit.

In Chapter 6, Valerie P. Hans, Hiroshi Fukurai, Sanja Kutnjak Ivković, and Jaihyun Park remind us that many countries are developing systems of lay participation, which share some features of the U.S. jury system (e.g., lay jurors, deliberation) but have different characteristics as well, including mixes of professional and lay judges and nonbinding decisions by lay participants. The authors describe the characteristics of these systems and novel—at least in the context of traditional jury research—methods for examining the types of comparative questions that have arisen as a function of these emerging jury systems across the globe.

In Part II (consisting of Chapters 7–10), a number of prominent jury scholars answer the second guiding question: Should researchers place a greater value on ecological or external validity than on internal validity when designing and evaluating jury research? In other words, should we emphasize conducting studies that emulate real juries as much as possible (ecological validity) in the hope that this will increase the generalizability (external validity) of our studies, or should we be more concerned with conducting tightly controlled experimental studies that allow for causal conclusions based on the results (internal validity)?

In Chapter 7, Jonathan J. Koehler and John B. Meixner, Jr. argue that researchers' methodological choices to emphasize one type of validity over another should be governed by the goals of the research, with research intended to support theory development properly emphasizing internal validity at the expense of ecological or external validity. However, if the research has more applied goals, the authors argue that researchers should be certain to design studies that have high ecological validity.

Similarly, in Chapter 8, Daniel A. Krauss and Joel D. Lieberman argue for more realistic participant samples, more standardized and realistic stimuli, increased stimulus sampling, and better collaboration with legal scholars to improve the methods of jury researchers. However, they present empirical evidence from a survey of editors and editorial board members of journals that publish jury research that suggests that these respondents—who influence

what types of jury research are published in high-impact psychology and law journals—may be relatively unconcerned with whether jury simulation research has high ecological validity.

In Chapter 9, Brian H. Bornstein updates his analysis of the validity of jury research (Bornstein, 1999), noting new trends that have emerged since that article was published, including a reduction in the number of articles addressing jury issues, fewer studies using undergraduate participants, and more studies using videotaped stimuli and deliberation. Although he concludes that the verisimilitude of jury research is increasing overall, he notes that simulations have not improved on one important dimension, the consequentiality of the decisions made by participants.

In Chapter 10, the final chapter of Part II, Mary R. Rose uses an empirical approach to test an assumption of many jury scholars who argue for increased verisimilitude in jury simulations, specifically that courts and legal practitioners will not accept findings from jury simulations that are low in ecological validity. Her analyses suggest that instead of dismissing jury research findings because of low verisimilitude, courts rely on simulation studies when they support procedural changes that justices want to make but dismiss them when they support making changes to policy that they find undesirable.

In Part III, the final chapter and a conclusion provide a synthesis of the book's themes, both suggesting that there are times in which the research question lends itself to particular jury methods, and they make recommendations for future directions for research. In Chapter 11, Norbert L. Kerr, an esteemed jury scholar who notably contributed significantly to developing theory about jury decision making and to addressing pressing practical concerns about jury competence, provides us with a swan song—his advice, based on his 40-year career studying jury behavior, for what jury researchers should and should not do when designing research. His thoughts mirror the structure of this book in that his list of dos and don'ts for jury researchers addresses how to choose important research questions and the methodologies used to test those questions.

In the concluding chapter, I end the volume with a synthesis of the recommendations for choosing important research questions and appropriate research methods to test those questions. Both sets of choices likely rest on whether the goals of the researcher are weighted toward developing basic theory about jury decision making or toward addressing more applied concerns. I identify three areas of inquiry that would benefit from future attention from jury researchers, providing readers with a road map for how to produce influential research that is both theoretically and practically interesting and methodologically sound.

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