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# Assessing the Difference Critique of Deliberation: Gender, Emotion, and the Jury Experience

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*Despite increasing enthusiasm for political deliberation as a rejuvenating tonic for representative democracy, some theorists question the extent to which deliberative forums adequately incorporate diverse individuals and communication styles. Unfortunately, the theoretical debate between the deliberative theory and the “difference critique” has reached an impasse. To advance this important literature, we derive 2 formal propositions from each perspective and test these rival claims in the context of the jury system, the most prominent institutionalized deliberative practice in the United States. Surveys of over 3,000 jurors who served in local courthouses indicate that gender and other demographic differences are poor predictors of jurors’ satisfaction with their service experience, including their perceptions of deliberation. The study also shows that emotion—a dimension of deliberative experience presumed to be gendered—is important for both men and women. On balance, the results call into question the power of the difference critique, at least in the context of modern jury deliberation.*

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It would be an understatement to say that Habermas’ (1981/1984, 1962/1991) idea of a deliberative public sphere has been well received by many theorists in political science and communication. More accurately, Habermas’ ideal of an open, equal-access deliberative public space has inspired a wave of scholarship in deliberative [2] democracy. The “ideal speech situation” and related concepts helped spark the development of deliberative polls and myriad other deliberative practices (Crosby & Nethercutt, 2005; Fishkin, 1991; Hendriks, 2005; Lukensmeyer, Goldman, & Brigman, 2005; Mathews, 1994; Ryfe, 2002). Proponents of deliberative democracy argue that through deliberation, citizens can become more enlightened about the merits of other viewpoints and the value of civic participation in general (Burkhalter, Gastil, & Kelshaw, 2002; Delli Carpini, Cook, & Jacobs, 2004; Melville, Willingham, & Dedrick, 2005; Warren, 1992). Additionally, deliberative theorists assert that decisions borne out of deliberative spaces have the potential to contribute to a more

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vibrant and legitimate representative democracy by forcing elected officials to respond to deliberative recommendations (Ackerman & Fishkin, 2004; Dryzek, 2000; Gastil, 2000, 2008; Leib, 2004; Yankelovich, 1991).

The Habermasian public sphere, however, spawned its share of critics, as well. Some feminist and multicultural theorists, in particular, have expressed skepticism toward the Habermasian vision and the deliberative democratic theory it sparked (Benhabib, 1996, 2002; Fraser, 1997; Sanders, 1997; Young, 1996). For them, the ideal public sphere remains an unrealized ideal, at least with regard to gender and cultural equality, and many critics are skeptical of whether such an ideal is within the reach of human associations (Sanders, 1997). Theorists such as Benhabib (1996, 2002) and Young (1996), representatives of the so-called “difference critique,” argue that deliberative spaces are unfairly biased toward the values and norms of dominant groups (men, in particular) because certain normative assumptions about deliberation, including the emphasis on rational, nonemotive discourse, systematically exclude women and minorities. Indeed, a wealth of interdisciplinary scholarship in communication, psychology, and sociology supports the contention that men and women tend to communicate in distinctive ways (Dow & Wood, 2006; Foss, Foss, & Griffin, 1999; Gilligan, 1982; Marder, 1987; Tannen, 1994).

To date, the debate over whether or not deliberation reifies or manages cultural and gender differences has remained largely theoretical. Though empirical research on deliberation has begun to appear (Delli Carpini et al., 2004; Mendelberg, 2002; Ryfe, 2005), no research has *directly* examined how gender shapes people’s experience of deliberation. Thus, the advocates of deliberative democracy and the adherents to the difference critique have reached a theoretical impasse, each expressing contrasting—sometimes utopian versus dystopian—visions of deliberation. To advance the conversation about deliberation and difference, it may now be necessary to subject these rival theoretical stances to modest empirical tests.

This essay sets up and conducts precisely such a test by exploring the impact of gender and emotion on the experience of jury deliberation. As the only institutionalized deliberative space where lay citizens are required to deliberate, and the inspiration for processes such as citizen juries (Crosby & Nethercutt, 2005), the American jury system presents an ideal site for this inquiry. Using original survey responses from empanelled jurors to questions about their experience serving and deliberating in county and municipal courts, we will directly assess individual jurors’ accounts of deliberation. Before doing so, however, we begin by clarifying the theoretical stakes of such a study.

### The promise of deliberation

Our first task is clarifying the basic tenets of deliberative theory. After a brief overview of the deliberative conception of democracy, we turn to two key ideas in deliberative theory—its capacity to work effectively with diverse participants and its ability to incorporate both reasoned argument and emotional experience.

### The deliberative perspective

Deliberative democratic theory grew out of the more fundamental conviction that greater participation by average citizens in governance makes for a healthier democracy (Barber, 1984; Pateman, 1970). Deliberation has been variously defined (Chambers, 2003), but it is essentially an egalitarian decision-making process during which citizens listen to, learn from, and engage with alternative viewpoints (Burkhalter et al., 2002; Dryzek, 2000). Direct citizen discussion and decision making are key to deliberative theory, owing to the concern that even democratically elected representatives may act to preserve their private interests rather than the interests of the groups they represent (Chambers, 2003; but see Bessette, 1994).

Habermas' (1981/1984, 1962/1991) influential writings on deliberation and communication explain that we must presuppose deliberative norms in order to have a viable public sphere. Deliberative theory took Habermas' norms as not so much as a description of background assumptions as a descriptive ideal of deliberative public discourse that should be pursued as a supplement to traditional representative democracy. Prescriptively, deliberative democrats often encourage deliberation among "average" citizens who gather together to learn and debate community and political issues. Whether or not the deliberative group is actually empowered to create real policy decisions (as they sometimes are), deliberative democracy helps keep leaders accountable by informing and educating representatives about their constituents' collective desires (Cohen, 1989; Dryzek, 1990; Fishkin, 1991; Gastil, 2000, 2008; Leib, 2004).

### Diversity, legitimacy, and subjectivity

Deliberative democracy requires that citizens learn about and respect views and opinions that may be contrary to their own (Gutmann & Thompson, 1996; Pearce & Littlejohn, 1997). The idea is that listening to others "leads to empathy with the other and a broadened sense of people's own interests through an egalitarian, open-minded, and reciprocal process of reasoned argumentation" (Mendelberg, 2002, p. 153). In other words, deliberation challenges individuals' conceptions of the "common good" by forcing them to engage with alternative versions of the ideal society.

Importantly, the legitimacy of the deliberative outcome depends on the inclusion of diverse populations, including groups who are considered minorities either by status or by opinion (Benhabib, 1996, 2002; Chambers, 2003). Diversity is essential because a deliberative body needs the range of views represented in the community present in the deliberation in order to negotiate the best solution for the community as a whole. It is theoretically possible that what at the beginning may be a minority opinion is actually the result of a better reasoned argument that the community eventually adopts through deliberation. Moreover, even when the initial majority position prevails, it may be tempered or substantially altered as a result of considering alternative points of view.

Though aspiring for the above ideal, proponents of deliberative democracy recognize that groups engaging in deliberation achieve success by degrees (Delli Carpini et al., 2004; Fishkin, 1995; Gastil, 2000, 2008). According to Burkhalter et al. (2002),

2  
3 creating a public setting for deliberation is not always enough. Deliberation is likely  
4 to occur when “participants perceive potential common ground, believe deliberation  
5 is an appropriate mode of talk, possess requisite analytic and communication skills,  
6 and have sufficient motivation” (p. 398).

7 Indeed, one related debate among deliberative theorists concerns the appropri-  
8 ateness of deliberation on issues that involve profound public differences or those  
9 [3] that are largely moral judgments. For example, whereas Gutmann and Thompson  
10 (1996) remain optimistic that deliberation can overcome “deep conflict” by enforc-  
11 ing reciprocity and recognition, Dryzek (2005) points out that even reciprocity and  
12 recognition may conflict with some values, such as those held by religious funda-  
13 mentalists. Thus, even though attitudes about crime and punishment may predis-  
14 pose jurors to certain opinions, deliberative theorists remain largely optimistic that  
15 the shared jury experience, combined with a structured arrangement promoting  
16 reciprocity and mutual recognition, can lead to an enriched discussion respective  
17 of the jurors’ diverse values.

18 How would one assess whether an ostensibly deliberative process, in fact,  
19 [4] achieved its aims? Researchers have tried various approaches to measure delibera-  
20 tion, such as measuring argument quality (Cappella, Price, & Nir, 2002) or evalu-  
21 ating rhetorical appeals (Mendelberg & Oleske, 2000). Another way to assess  
22 deliberation is to ask respondents how satisfied they were with the process itself.  
23 We believe process satisfaction is central to the question of deliberation and differ-  
24 ence, in particular, because if deliberation encourages reciprocity and listening,  
25 the individuals involved are the best equipped and situated to interpret how they  
26 were incorporated into the deliberation. The self-report approach is, by definition,  
27 subjective, but subjectivity is vital in this context.

28 One could object that respondent answers are biased by social desirability, that  
29 respondents could suffer from false consciousness, or are so devalued in deliberation  
30 that they cannot reflect on it. We believe, however, that respondents might be more  
31 apt to voice criticism, or even emotion, in a survey rather than in the deliberative  
32 context because they do not have to uncomfortably confront their peers (York &  
33 Cornwell, 2006).

34 Building on the idea that personal satisfaction can help shed light on the per-  
35 ceived legitimacy of the deliberative process, it is fair to conclude that deliberative  
36 theorists advance the following claim:

37 Proposition 1: People of diverse cultural backgrounds and social status experience  
38 well-structured deliberative events with equivalent levels of satisfaction regarding  
39 both process and outcome, regardless of the issue being deliberated, owing to  
40 a shared experience of inclusion and fair treatment by their peers.  
41  
42

### 43 **Balancing reason and emotion**

44 A second issue that has created some controversy within deliberative theory is the  
45 question of deliberation’s capacity to incorporate effectively both reason and  
46

emotion. Deliberative theorists with a direct lineage to Habermas agree that deliberation should stress rationality or at least *reasoned* arguments (Cohen, 1989; Hershenov, 2005). As Manin (1987) explains, “Between the *rational* object of universal agreement and the *arbitrary* lies the domain of the *reasonable* and the *justifiable*, that is, the domain of propositions that are likely to convince, by means of arguments whose conclusion is not incontestable, the greater part of an audience ... ” (p. 363). Thus, these proponents of deliberative democracy are generally wary of emotional and rhetorical appeals on the grounds that emotions are not subject to reasoned inspection and can potentially corrupt the deliberative process by clouding a group’s judgment (Thompson & Hoggett, 2001).

Other deliberative theorists, however, have made space in their theoretical ideals for emotion, which appears to play a complex role in actual deliberative practice. van Stokkom (2003), for example, has pointed out that emotion can be critical as a motivator for deliberation: “Many participants are motivated by negative emotions, whether these are from the anger/indignation group or the fear/distrust group. Similarly, in another context participants may nurture hope and positive expectations” (p. 396). As deliberation unfolds, increasingly positive emotions can promote further deliberation: “Enjoyment and—its concrete version—satisfaction, emotions which for example are felt when creative input is rewarding and promising. This group dynamic arouses emotional energy and often coincides with a process of mutual recognition” (van Stokkom, 2003, p. 396).

Practitioners of deliberation have also valued the role emotion can play. When Mansbridge, Hartz-Karp, Amengual, and Gastil (2006) asked experienced facilitators to examine representative public discussions to learn inductively how these experts understood deliberation, the investigators found considerable support for incorporating even strong emotions:

One facilitator coded as “good” the way the “increasing passion” in the participants’ comments led to a “deeper level of group discussion.” Another found that “the injection of emotion into the discussion makes for greater introspection on the part of the other participants. This is evidence[d] by their body language and the tenor of their response to [the person talking].” Several other coders shared this positive assessment of emotion-laden expression leading to deeper deliberation (p. 19).

Dahlberg (2005) has even tried to show how a broader reading of Habermasian principles can directly accommodate diverse forms of discourse, including emotional expression. Critics might question whether theorists can simply wave away the privileging of rationality built into the taken-for-granted norms of deliberative practices and institutions, but deliberative theory often embraces a conception of discussion that welcomes not merely all viewpoints but also diverse means of *expressing* preferences and experiences (Barber, 1984; Gastil, 1993). In sum, we conclude that deliberative theory can advance the following claim regarding emotional experience:

2  
3 Proposition 2: People participating in deliberative events do not limit themselves to  
4 reasoned argument to the exclusion of experiencing the sort of strong emotions that  
5 could influence their deliberative judgments.  
6

## 7 **The difference critique**

### 8 **Deliberation, gender, and status**

9 Contrary to the principles of equality embedded in the above formation of deliberative  
10 democracy, Landes (1996) charges, “From the outset, democracy in the modern  
11 world produced not only a discourse but a practice of gender difference” (p. 296).  
12 Landes and other proponents of the difference critique of deliberative democracy  
13 suggest that gender difference, in particular, thrives in deliberation because women  
14 possess a unique perspective and experience that may be further undermined by  
15 prevailing deliberative norms. In other words, because women are not treated as  
16 men’s equals in daily life, it is impossible for men to recognize them as free and equal  
17 in deliberation. Whether or not women’s communication style is a product of  
18 women’s overall subordination by men, women’s communication style is generally  
19 different from the type of rational discourse privileged in deliberative settings.  
20 As Young (1996) argues, “By restricting their concept of democratic discussion  
21 narrowly to critical argument, most theorists of deliberative democracy assume  
22 a culturally biased conception that tends to silence or devalue some people or  
23 groups” (p. 120).  
24

25 Young (1996) suggests that women tend to speak in a more “tentative, exploratory,  
26 or conciliatory” manner than do men who act more “assertive and confrontational”  
27 (p. 123). Various empirical studies support this contention. For example, Gilligan’s  
28 (1982) famous book, *In a Different Voice*, details how women are generally  
29 more concerned with listening to others than are men, who generally prefer to act  
30 autonomously. Using linguistic analysis, Tannen (1994) observed the same phenomenon,  
31 as well as women’s willingness to try to accommodate men in conversation.

32 A more subtle version of this argument also takes other demographic and status  
33 differences into account alongside gender. Feminist theory has become increasingly  
34 sensitive to the critique that “the distinctive and specific attributes of gender can be  
35 identified by holding race and class constant or by examining the lives of women who  
36 suffer only sexist oppression and not also oppressions of race, class, age, or sexuality”  
37 (Young, 1997, pp. 13–14).

38 For example, hooks (1987) suggests that women from oppressed groups “are  
39 □ more likely to see exaggerated expressions of male chauvinism” (p. 62). Indeed, race,  
40 work status, and education level all potentially shape a woman’s experience (Kittay,  
41 1999; Sanders, 1997; Young, 1994). Women with higher status may be better positioned  
42 or primed to engage in rational, nonemotive deliberative discourse, in part,  
43 because they have had to do so to achieve their success. In other words, there are  
44 particular aspects of women’s experiences that may mitigate or exacerbate their  
45 experience of discrimination in deliberation. In particular, advocates of the  
46



1 difference critique can expect status differences to cascade such that a woman's voice  
2 is excluded even more directly and completely when that woman occupies other  
3 subordinate social positions, such as identifying with an ethnic minority group or  
4 being under- or unemployed.  
5

6  
7 In the previous section on deliberative theory, we explained how satisfaction with  
8 the deliberative experience was an important point of focus. Deliberation values such  
9 subjective phenomena as reciprocity and listening, and those actually participating  
10 in deliberation are best equipped to evaluate whether or not they feel they were  
11 satisfactorily heard and respected. In the same way, satisfaction helps tap into the  
12 difference critique because this critique maintains that some individuals are consist-  
13 ently devalued in deliberation. Such an experience manifests itself in a frustration  
14 and dissatisfaction that may not be apparent in the deliberative discourse per se but  
15 should appear in the discouraged participants' own process evaluations. The survey  
16 approach provides a forum for individuals to express displeasure outside the delib-  
17 erative process, during which they may not have felt comfortable publicly voicing  
18 concerns about their treatment.

19 Thus, by way of contrast with Pollyannaish deliberative theorists, difference  
20 critics advance the following two propositions:

21  
22 Proposition 1: People of different cultural backgrounds and social status levels  
23 experience well-structured deliberation quite differently. Women—particularly those  
24 with lower socioeconomic status—are likely less satisfied with both deliberative  
25 processes and outcomes, owing to their experiencing exclusion and unfair treatment  
26 by their peers.  
27

### 28 **Emotion and rationality**

29 Within the broader difference critique, the tension between emotion and rationality  
30 has a special significance. Proponents of the difference critique worry that empha-  
31 sizing rational argument in deliberation stands to exclude or silence women who  
32 may or may not be used to communicating in that style (Benhabib, 1996; Sanders,  
33 1997; Young, 1996). In addition to engaging in different conversational habits that  
34 may make it difficult for men and women to respect each other as equals, emotion is  
35 more centrally located in women's speech. According to Young (1996), the "speech  
36 culture" of women "tends to be more excited and embodied, more valuing the  
37 expression of emotion, the use of figurative language, modulation in tone of voice,  
38 and wide gesture" (p. 65). To incorporate more emotive types of discourse in  
39 deliberation such as personal testimony (Sanders, 1997) or rhetoric, storytelling,  
40 and greetings (Young, 1996) stands in direct opposition to deliberative democrats  
41 who purposely seek to bracket emotion and personal narrative apart from publicly  
42 reasoned deliberation.

43 In this view, rationalistic deliberative processes separate argument from emotion  
44 in a way that systematically excludes women's experience and perspective. Thus,  
45 a second proposition can be contrasted with conventional deliberative theory.  
46

2  
3 Proposition 2: Deliberative events effectively discourage women (along with men,  
4 for that matter) from experiencing strong emotions that could influence their  
5 judgments.

6 Just as the prior propositions do not represent the full range of claims in deliberative  
7 theory nor do these capture all the nuances of the difference critique. What we have  
8 done here, however, is move closer to articulating rival hypotheses that we can hold  
9 up against data to advance the debate between these conflicting theoretical perspec-  
10 tives. We have no illusions that such research will *resolve* this theoretical conflict;  
11 rather, we aim only to *advance* it in an appropriately deliberative spirit.  
12

### 13 **Gender and jury deliberation**

14  
15 As suggested in the introduction, the U.S. jury system is a unique site in which to  
16 study deliberation because the court system asks nearly every U.S. citizen to parti-  
17 cipate regardless of status. In most jurisdictions, one needs only to obtain a driver's  
18 license (or be a registered voter) to receive a summons from one's local courthouse.  
19 Moreover, civil and criminal juries are the only regularized, institutionalized form of  
20 public deliberation available for study, and difference critics have targeted it as the  
21 perfect site for demonstrating the power of social status over ostensibly deliberative  
22 bodies (Sanders, 1997). Perhaps the main difference between legal juries and other  
23 deliberative bodies is that juries set out to make a concrete, binding decision, whereas  
24 other citizen-deliberative bodies are not designed to do so. Looking more carefully at  
25 the experience of jury service allows us to move our theoretical discussion of delib-  
26 eration and difference to an empirical setting where everyday practice might help us  
27 out of a theoretical impasse.  
28

### 29 **Inclusion and influence**

30 Though no prior research has directly tested the contrasting claims of deliberative  
31 and difference theorists, it is useful to review the admittedly mixed and potentially  
32 outdated findings of related research done to date (York & Cornwell, 2006). Despite  
33 historical efforts to exclude women, minorities, and others from juries (Marder,  
34 1987; Ritter, 2000), the modern jury often contains a relatively representative  
35 cross-section of the population in a given jurisdiction (Hans & Vidmar, 1986; York &  
36 Cornwell, 2006). In a sense, the jury has become the most diverse and inclusive  
37 democratic process, in spite of the widespread (but rather evenly distributed) folk  
38 practice of strategic "jury avoidance" (Jonakit, 2003).

39 Given the diversity of potential jurors in the pool and attorneys' keen interest in  
40 "stacking" juries (Kressel & Kressel, 2002), it is not surprising that considerable  
41 research has probed the impact of juror sex and other jury demographics on verdicts.  
42 It may come as a surprise to the reader, however, that individual demographic factors  
43 in general, such as gender, ethnicity, and occupation, have shown nothing more than  
44 a weak impact on juries' decisions (Hans & Vidmar, 1986; Moran & Comfort, 1982;  
45 Sannito & Arnolds, 1982; York & Cornwell, 2006).  
46



Studies on communication style and juries, albeit exclusively *mock* juries, found results similar to those cited in the difference critique. For example, Mills and Bohannon (1980) found that women perceive males to be more influential during jury deliberation. Strodbeck, James, and Hawkins (1957) also found that men of “high status” were more likely to talk and that men were more likely than women to ask questions and give answers. A host of other studies have documented the overwhelming likelihood that a jury foreperson will be male (Beckham & Aronson, 1978; Kerr, Harmon, & Graves, 1982; Sannito & Arnolds, 1982). This is significant because, as foreperson, an individual can shape the overall tone and style of deliberation (Marder, 1987).

In a more recent study of real jurors, York and Cornwell (2006) suggest that gender may place a less significant role in jury deliberations than it once did. The researchers asked real jurors which jurors they believed were the most influential during deliberations, and jurors were equally likely to single out a female as male. Instead, jurors were more likely to suggest that seemingly upper-class jurors were influential due to “generalized expectations of their competence of their possession of skill sets that enhance jury room performance” (p. 455). In language reminiscent of the difference critique, the authors therefore conclude that “increased statistical representation in the jury pool does not guarantee that diverse views will affect verdicts” (p. 455). In other words, status can effect who talks and who is listened to more closely.

### Moderating influences

The effect of juror sex may depend, however, on other features of the juries and trials on which they serve. Specifically, the nature of the charges and the gender composition of the jury may moderate the effects of juror sex on the service experience.

#### *Case type*

Studies explicitly focusing on “women’s issues” (defined as sexual harassment and rape) suggest that women may be more likely to convict a defendant than men in such cases (Fischer, 1997; see generally, Hans & Vidmar, 1986). One can link these findings to the difference critique in a straightforward manner. Extending feminist logic that women and other minority groups experience discrimination due to an undervalued shared experience, it follows that minority groups may feel more undervalued in certain situations than others due to a related shared experience or expertise. For example, women might find themselves silenced more during deliberations that concern issues where men have traditionally dominated, such as political deliberations, whereas women might have a more satisfactory experience deliberating in educational deliberative forums where female activism is more the norm (Burns, Schlozman, & Verba, 2001).

Taking case type into account, we can refine the propositions emanating from deliberative theory and the difference critiques. Deliberative theorists have posited that some issues were more appropriate for public deliberation than others, specifically issues involving morals or values (Dryzek, 2000; Goi, 2005; Warren, 1992). It was not apparent in the preexisting theoretical literature, however, that within the

2  
3 narrower set of issues put before a jury, some types of issues could yield measurably  
4 different deliberative experiences than would others. Theorists such as Gutmann and  
5 Thompson (1996), who believe the norms of mutual recognition and reciprocity can  
6 overcome deep difference, would therefore predict that no substantial moderating  
7 effect for case type.

8 By contrast, proponents of the difference critique can argue that because women  
9 are more often victims of sexual crimes than men, they may have a more challenging  
10 experience staying within the prescriptive confines of rational deliberation on cases  
11 with sexual dimensions or involving physical violence. As a result of having stronger  
12 emotional reactions, more pronounced communication style clashes, and other  
13 differences with their male juror counterparts, women might ultimately report less  
14 satisfaction with the deliberative process on sex- and violence-related cases.

### 15 *Jury composition*

16 The gender composition of the jury also can be a significant moderating variable.  
17 Marder (1987) has argued that the male-to-female *ratio* of juries affects outcomes  
18 through a group composition effect more powerful than the mere aggregation of weak  
19 individual difference effects. For instance, studies of mock jurors suggest that all-  
20 female mock juries are more “evidence driven” than all-male juries which are more  
21 “verdict driven” (Marder, 1987). Evidence-driven juries take a ballot late in the pro-  
22 cess and spend time building a narrative story, whereas verdict-driven juries create  
23 “adversarial factions preoccupied with winning the point and silencing the dissenters”  
24 (Marder, 1987, p. 602). As for the “mixed” juries in between the two extremes, Marder  
25 reports that “the women consistently became more silent” (p. 603).

26  
27 □ In a related study, Nagel and Weitzman (1972) combined the jury-composition  
28 effect with a more fine-grained analysis of jury trials. They found that juries with  
29 a male majority awarded larger awards to male plaintiffs, whereas majority-female  
30 juries tended to award higher sums to female plaintiffs. More generally, Mendelberg  
31 (2006) found that group composition had a powerful influence on opinion change in  
32 mock juries deliberating on punitive civil damages.

33 The issue of gender balance on juries has a direct link to the deliberation and  
34 difference theories. From the standpoint of conventional deliberative theory, com-  
35 position effects would demonstrate the vulnerability of deliberation to distortion due  
36 to the inadvertent or willful exclusion of different social groups (Dahlberg, 2005;  
37 Mendelberg, 2006). Previous deliberative theory, therefore, has stressed diverse  
38 membership to ensure sufficient representation of different voices (e.g., Burkhalter  
39 et al., 2002; Cohen, 1989). This concern, however, is more often expressed as a desire  
40 for representative bodies of citizens (e.g., Crosby & Nethercutt, 2005; Fishkin, 1995;  
41 Gastil, 2000), with the presumption that minorities will get a fair shake, even when  
42 they make up a small proportion of the interactants. In the end, then, deliberative  
43 theorists would discount the likely impact of composition effects.

44 Difference theorists, such as Young (1997) and Benhabib (1996), start from the  
45 presumption that women’s communication style works against their inclusion in  
46

deliberation, owing to the privileged status accorded the male style of speech in deliberative contexts. Difference theorists have not explicitly addressed if and how deliberation is different when the numerical majority of those participating in deliberation are themselves minorities or members of groups that have lower social or discursive status. We believe it is reasonable, though, to suspect that the problems highlighted in difference theory could be mitigated or exacerbated by skewed jury compositions. Thus, juries with strong female majorities are likely more respectful of emotional experience and more likely to yield satisfying deliberative experiences for female jurors, and juries with large male majorities should yield the opposite outcomes.

Opening our analysis to include the potential effects of case type and group composition on jury satisfaction takes us beyond the basic, explicit claims of deliberation and the difference critique. This creates the possibility of finding specific circumstances where the difference critique might be more or less relevant. This, in turn, could lead to modest theoretical reconciliation, effectively placing boundary conditions on the validity of the deliberative theorists' optimism (and the difference theorists' skepticism).

### Summary

No prior study speaks directly to the contrasting propositions of deliberative and difference theorists, and the research even gives hope to both sides of the debate. It appears that sex and other demographic characteristics are poor indicators of the results of actual jury deliberation, but studies of mock juries show that communication style differences can occur in juries as elsewhere in social life. Previous research also leads us to consider the significance of both jury gender composition and the degree to which trial issues are "gendered" (Fischer, 1997). In assessing the rival propositions advanced by deliberative and difference theorists, we will treat these as potential moderator variables that could interact with gender's influence on deliberative experience.

### Study design and measures

We conducted these tests with a two-wave panel survey administered to jurors at the King County and Seattle Municipal Courthouses in Washington State, United States, in 2004. (These data were collected as part of the Jury and Democracy Project, [www.jurydemocracy.org](http://www.jurydemocracy.org).) The total sample consisted of 3,312 jurors. Eighty-five percent of respondents served in the King County Courthouse and the remainder served in the municipal courthouse. Of particular importance to this study, women made up essentially half (51.5%) of the sample.

Overall, 70% of jurors completed the Wave 1 survey, which measured preservice attitudes and demographics. Researchers administered the Wave 2 survey no later than 22 days after the completion of service. Sixty-nine percent of those contacted completed this second survey, which asked about jurors' courthouse experience.

Before discussing the survey instrument itself, a caveat is in order. A decided virtue of this research design was the use of *actual* jurors, who could report on their experiences in consequential deliberation—public talk with defendants’ freedom and finances on the line. In exchange for this realism, it was necessary to accommodate the concerns of equally real county judges, who authorized the study but had to limit the potential disruption caused by surveying jurors in their courtrooms. In particular, the judges were reluctant to permit detailed, direct questions about the communicative experience in the jury room, lest the results be used by attorneys to challenge unfavorable trial outcomes. Even with this constraint, we were able to gain far greater access to jurors’ self-reported experiences than is commonly the case.

### Subjective jury experience

We measured jurors’ satisfaction with their courthouse experience through four separate questions:

1. “Overall, how would you rate your jury experience?” with a 5-point response scale from 1 (*less than satisfactory*) to 5 (*excellent*),  $M = 3.52$ ,  $SD = 1.16$ ;
2. “How were you treated by fellow jurors?” with the same response scale as for Item 1,  $M = 4.16$ ,  $SD = 0.90$ ;
3. “Overall, how would you rate the quality of the jury’s deliberation?” with a 4-point response scale from 1 (*very unsatisfied*) to 4 (*very satisfied*),  $M = 3.37$ ,  $SD = 0.82$ ; and
4. “How would you rate your satisfaction with the jury’s final verdict?” with the same response scale as for Item 3,  $M = 3.24$ ,  $SD = 0.91$ .

Though responses to these items were moderately correlated, the four items were kept separate to distinguish jurors’ assessments of the verdict, deliberation, juror treatment, and the overall experience of jury service.

To assess the second set of theoretical propositions, we also measured jurors’ experience of emotion. The Wave 2 survey included the question, “What emotions did you feel during the trial?” Respondents stated whether they experienced any combination of positive or negative emotions versus none at all. Although verbatim responses were also recorded (e.g., “happiness,” “frustration,” or even “angst”), for the purpose of this study, we simply distinguished between those jurors who reported feeling emotion (78.8%) and those who did not (21.2%).

Our preference would have been to have asked all jurors about the emotional tenor of their jury deliberation, but this question was deemed too sensitive by the county judges who reviewed our questionnaire. In the municipal courthouse, however, the judges allowed us to ask the additional question, “What emotions did you feel during jury deliberation?” The high correlation ( $r = .65$ ) between the dichotomized version of item and the one presented above suggest that the trial-emotion item can serve as an adequate proxy for deliberation emotion.

### Demographic variables

Straightforward measures in the Wave 1 survey recorded jurors' demographic backgrounds. Age was assessed by asking respondents the year in which they were born ( $M$  age in years = 48.6,  $SD$  = 13.18). For ethnicity, respondents chose among six categories: White (87.3%), Asian (6.6%), Black/African American (2.8%), Native American or Alaskan (1.8%), or Hispanic/Latino/Latina (1.5%). For the regression analyses below, a single dummy variable was created; collapsing all non-White ethnicities into a single "minority" category was necessitated by low subsample sizes for all minority groups in the King County jury pool (as in the larger King County population).

Formal level of education was measured using nine standard census categories. Collapsing these for the sake of a summary statistic, 34.1% of respondents had not attended college, 42.9% had some college or a bachelor's degree (42.9%), and the remaining 22.9% had done at least some graduate work, including professional programs, such as law or medicine.

Work status was also measured using standard categories, and this variable was recoded into a dummy variable for regression analysis. Under this coding, 70% of respondents identified themselves as "working full time" or "student" and the remaining 30% self-identified as unemployed, retired, part-time workers, or something else.

### Jury and trial characteristics

Knowing each juror's individual sex, we were able to estimate the gender composition of each jury. We say "estimate" because we could not identify the sex of every juror who served on the 292 trials in this study. For the 30% of jurors who did not complete the Wave 1 survey, we were still able to identify the sex of 74.8% of these nonrespondents by matching their complete name in court records with a corresponding unique record in the King County voter database, which happens to record each voter's sex. Using these data, gender composition was broken down into three categories: Those trials in which 60% or more of the jurors were male (15.3% of all juries), those in which 60% or more of the jurors were female (19.0%), and a remainder category of relatively "balanced" juries (37.3%).

We also used court records to note whether a trial was conducted in criminal court (78.5% of all cases) or civil court (21.5%). Researchers also used official King County trial categories to assess the seriousness of the primary charge on a 10-point scale from 1 ("very low/minor," such as a misdemeanor in municipal court) to 10 ("very high/serious," such as first-degree murder) ( $M$  = 5.21,  $SD$  = 2.30).

We also sought to examine whether charges involving "women's issues" shaped jurors' deliberative experiences. We operationalized "women's issues" as domestic violence, harassment, indecent exposure, kidnapping, molestation, prostitution, rape, and other charges related to sexual crimes. Previous studies on gender and juries have used similar categorizations (e.g., Fischer, 1997). In our data, 23.9% of the jurors served on a trial where the primary charge against the plaintiff/defendant concerned sexual crimes (e.g., rape, prostitution, exposure, etc.), 16.2% of jurors

heard cases concerning nonsexual violent crimes (e.g., armed robbery, murder), and 59.8% sat for trials pertaining to an impossibly long list of other crimes and civil complaints.

## Results

### Predicting deliberative satisfaction

Recall that the difference critique suggests that women, particularly those with lower socioeconomic status, will experience less satisfaction with deliberation than their male counterparts. As demonstrated in Tables 1 and 2, however, no single demographic variable or trial characteristic consistently predicted responses to all four of our dependent variables (satisfaction with the overall jury experience, satisfaction with the jury verdict, evaluations of the quality of jury deliberation, and evaluations of treatment by fellow jurors). None of the demographic variables had a significant direct effect and only one of the gender interactions even approached significance, with White women being marginally more satisfied with the jury verdict ( $b = .24, p = .066$ ).

### *Case type*

The nature of the charges, however, was a significant predictors of various satisfaction measures. Somewhat surprisingly, individuals who served on trials involving sexual crimes reported higher overall satisfaction ( $b = .08, p = .013$ ), and trials involving all other charges yielded significantly lower juror-treatment scores than either sex-related ( $b = .09, p = .006$ ) or violence-related ( $b = .08, p = .007$ ) cases. These charge types also appeared to interact somewhat with juror sex. Sex and case type interacted significantly or near significantly for all but juror treatment.

### *Jury composition*

Tables 1 and 2 also show that the gender balance of the jury had both main effects and interactions. Individuals who served on a jury where 60% or more of the jury was female reported higher levels of overall satisfaction ( $b = .06, p = .046$ ) and juror treatment ( $b = .07, p = .048$ ) than did those serving on sex-balanced juries. Interestingly, though, jurors also reported marginally greater overall satisfaction when the jury was predominantly male ( $b = .05, p = .091$ ) than when it was balanced. This suggests that jurors felt slightly less satisfied with their jury experience when seated in evenly mixed juries, but a clear female-majority jury was the most likely to report both higher overall satisfaction and better treatment by fellow jurors.

### Emotion and deliberation

Moving to the results for emotion, recall that difference theorists suggest that deliberation discourages the experience of emotion owing to its emphasis on rationality. To assess this claim, we conducted straightforward chi-square comparisons of the proportions of men and women who reported having an emotional reaction during the trial. Overall, 83% of female jurors had this experience compared to 74% of male jurors,  $\chi^2(1, N = 1285) = 16.07$ .



**Table 1** Predictors of Verdict Satisfaction and Overall Satisfaction

Predictor Variable	Overall Satisfaction with Jury Experience		Satisfaction with Jury Verdict	
	<i>B</i> ( <i>SE</i> )	<i>b</i>	<i>B</i> ( <i>SE</i> )	<i>b</i>
Constant	3.27 (0.267)	—	3.55 (0.231)	—
Main effects				
Criminal trial	.05 (0.087)	.02	-.01 (0.075)	-.01
Charge level	-.02 (0.015)	-.04	-.04 (0.013)	-.09*
Charge: Sex	.30 (0.121)	.08*	.02 (0.105)	.01
Charge: Violence	.08 (0.103)	.03	-.09 (0.089)	-.04
Age	.00 (0.003)	.02	.00 (0.002)	.004
Education	-.01 (0.021)	-.01	.003 (0.018)	-.01
Full time	.03 (0.078)	.01	-.01 (0.068)	-.003
White	.092 (0.098)	.03	-.03 (0.085)	-.01
Female	.060 (0.069)	.03	-.10 (0.060)	-.05 <sup>†</sup>
Jury composition: Female > 59%	.18 (0.092)	.06*	.03 (0.080)	.01
Jury composition: Male > 59%	.16 (0.097)	.05 <sup>†</sup>	-.04 (0.084)	-.02
Sex interactions				
Charge: Sex × Female	-.12 (0.245)	-.02	-.39 (0.212)	-.09 <sup>†</sup>
Charge: Violence × Female	-.40 (0.212)	-.09 <sup>†</sup>	-.39 (0.183)	-.11*
Education × Female	.03 (0.059)	.05	.07 (0.051)	.16
Full time × Female	.18 (0.197)	.07	.12 (0.170)	.06
White × Female	.16 (0.291)	.07	.46 (0.251)	.24 <sup>†</sup>
Jury Female > 59% × Female	-.03 (0.225)	-.01	-.31 (0.194)	-.11
Jury Male > 59% × Female	.31 (0.219)	.05	.02 (0.189)	.004
Summary statistics				
<i>R</i> <sup>2</sup> (adjusted <i>R</i> <sup>2</sup> )	.023 <sup>†</sup> (.009)		.022 (.005)	
<i>N</i>	1261		1055	

**Note:** Coefficients for constant and controls are from the first entry in the regression equation. Interaction coefficients are from the second entry, after having entered all other variables. Female, White, and full-time (employment) are all dichotomous variables. *B* = unstandardized coefficient; *b* = standardized coefficient. \*\**p* < .01. \**p* < .05. <sup>†</sup>*p* < .10.

#### Case type

The upper half of Table 3 shows that this difference was most pronounced among individuals serving on juries deliberating on sex-related charges (88% vs. 81%) and “other” crimes (79% vs. 71%), with the emotion gap dropping to a statistical non-significance (90% vs. 85%) for violent crimes.

#### Jury composition

The lower half of Table 3 shows that women reported emotions more often than did men under all three jury gender composition types, but the gaps were

2  
3 **Table 2** Predictors of Perceived Deliberation Quality and Treatment by Fellow Jurors

4

Predictor Variable	Quality of Jury Deliberation		Treatment by Fellow Jurors	
	<i>B</i> ( <i>SE</i> )	<i>b</i>	<i>B</i> ( <i>SE</i> )	<i>b</i>
Constant	3.503 (0.208)	—	4.340 (0.208)	—
Main effects				
Criminal trial	.01 (0.068)	.01	-.17 (0.068)	-.08
Charge level	-.03 (0.011)	-.08*	-.02 (0.012)	-.05
Charge: Sex	-.01 (0.094)	-.002	.26 (0.094)	.09**
Charge: Violence	.01 (0.080)	.003	.21 (0.080)	.08**
Age	.002 (0.002)	.03	-.001 (0.002)	.02
Education	.01 (0.016)	.02	.02 (0.016)	.04
Full time	-.05 (0.061)	-.03	-.02 (0.061)	-.01
White	-.07 (0.076)	-.03	.07 (0.077)	.03
Female	-.08 (0.054)	-.05	.08 (0.054)	.05
Jury composition: Female > 59%	.04 (0.072)	.02	.14 (0.072)	.06*
Jury composition: Male > 59%	-.01 (0.075)	-.004	.06 (0.076)	.02
Sex interactions				
Charge: Sex × Female	-.40 (0.191)	-.11*	-.23 (0.191)	-.06
Charge: Violence × Female	.07 (0.164)	-.02	-.21 (0.165)	-.06
Education × Female	.04 (0.046)	.12	.04 (0.046)	.09
Full time × Female	.07 (0.153)	.03	.12 (0.153)	.06
White × Female	.04 (0.226)	.02	.12 (0.227)	.06
Jury Female > 59% × Female	-.27 (0.175)	-.11	-.10 (0.175)	-.04
Jury Male > 59% × Female	-.08 (0.170)	-.02	-.05 (0.171)	-.01
Summary statistics				
<i>R</i> <sup>2</sup> (adjusted <i>R</i> <sup>2</sup> )	.019 (.002)		.028** (.014)	
<i>N</i>	1061		1248	

17 **Note:** Coefficients for constant and controls are from the first entry in the regression equation. Interaction coefficients are from the second entry, after having entered all other variables. Female, White, and full-time (employment) are all dichotomous variables. *B* = unstandardized coefficient; *b* = standardized coefficient. \*\**p* < .01. \**p* < .05. †*p* < .10.

38 statistically significant when the jury composition was balanced (82% vs. 73%) or  
39 equal to or greater than 60% female (84% vs. 74%). When juries were predom-  
40 inantly male, the emotion gap shrunk down to a nonsignificant 82% versus 75%  
41 contrast.

42 Despite the significant differences reported above, it is noteworthy that the  
43 overwhelming majority of both men and women reported experiencing emotions  
44 during their trials and that the reporting of emotions held fairly constant across the  
45 different trial types and gender compositions of juries.

**Table 3** Chi-Square Test of Relationship of Felt Emotion With Sex for Three Different Types of Charges and Three Different Jury Gender Compositions

Complaint/Charge Type	N	Women (%)	Men (%)	$\chi^2(df = 1)$
Violence related	666	90	85	1.39
Sex related	187	88	81	2.77 <sup>†</sup>
Other	274	79	71	6.53*
Jury Gender Composition				
>59% male	275	82	75	1.38
Balanced	608	82	73	7.37**
>59% female	402	84	74	5.33*

\*\* $p < .01$ . \* $p < .05$ . <sup>†</sup> $p < .10$ .

## Discussion

### Vindication of deliberative theory

Comparing our results with the propositions drawn out of deliberative and difference theory, we find strong overall support for both propositions of deliberative theorists in the context of the American jury system. Neither cultural nor status differentials appear to affect individuals' evaluations of the jury experience, as measured in terms of satisfaction with the deliberation, the verdict, treatment by other jurors, and overall service. Even when biological sex is compounded by other status differentials such as education, race, and work status, there was no clear pattern of difference in the subjective assessment of jury deliberation. This finding stands in direct contrast to the difference critique, which suggests that women and others of subordinate status will be further subordinated in deliberation (hooks, 1987; Mendelberg, 2002; Sanders, 1997).

Similarly, with regards to emotion, the difference critique suggested that deliberative activity would privilege reasoned argument and discourage emotion, to the detriment of women who communicate more emotively than men (Young, 1996). Our results show that although women *did* report experiencing emotions more often than did men, the overwhelming majority of both sexes consistently reported an emotional jury experience, regardless of jury and trial characteristics. Emotion appears to figure into the jury deliberation experience independent of individual differences and other variables surrounding the trial. Thus, the difference theorists' concern that deliberation discourages emotion may be overstated.

### Opportunities and challenges for deliberation

We do not mean to suggest that jury deliberation is identical to other or all deliberative forums. In contrast to other deliberative efforts, such as online or deliberative polling, jury deliberations are public, necessitate a unanimous group verdict, and require citizens engaging in deliberation to physically face those who will be impacted by their decision. Furthermore, it is possible that the historical prestige of the jury system

1  
2  
3 predisposes participants to either be more willing to engage or be more devoted to the  
4 process of deliberation than compared to a deliberative effort with which they have no  
5 or little previous knowledge. Nonetheless, the findings of this study still suggest some  
6 situations that may be more (or less) challenging for deliberation.

7 First, the moderating effects of jury composition and case type identify what may  
8 be some relatively easy or difficult settings in which to deliberate. On the plus side,  
9 individuals serving on female-majority juries reported both higher overall satisfac-  
10 tion and better treatment by their fellow jurors. This statistically significant differ-  
11 ence was modest in size, but it suggests that women may be better culturally  
12 equipped to facilitate a satisfying deliberative experience. After all, this finding  
13 parallels prior research showing that relative to men, women are generally more  
14 concerned with listening and including everyone in a conversation (Derber, 1979;  
15 Gilligan, 1982; Tannen, 1994). These results are especially good news for advocates of  
16 deliberation because they suggest that women's communication style is not neces-  
17 sarily disadvantaged or ignored in deliberation; rather, on female-majority juries, in  
18 particular, it is able to assert itself and yield better subjective participant experiences  
19 as a result. Recalling that women were *not* conversely frustrated with their experience  
20 on male-majority juries, it is fair to say that groups with a larger proportion of  
21 women simply present a special advantage for deliberation.

22 We also found differences between the sexes with regard to trial characteristics.  
23 Relative to males, female jurors deliberating on sex crimes had higher satisfaction  
24 and experienced better treatment by fellow jurors. Interestingly, however, women  
25 did not report experiencing significantly more emotions during these cases than  
26 compared to other cases. These results suggest that women have a nonemotional  
27 but higher involvement interest in some issues relative to others, either due to  
28 personal experience or presumed gender identification. This interpretation is further  
29 supported by previous studies on mock juries that have documented women's  
30 increased willingness to convict a defendant on cases concerning sexual harassment  
31 and rape (Fischer, 1997).

32 The other finding that merits further study was that, regardless of gender, jurors  
33 debating more serious charges reported lower overall satisfaction with the quality of  
34 jury deliberation and the final verdict relative to their counterparts serving on trials  
35 with lower stakes. Deliberating serious charges understandably puts stress on jurors,  
36 affecting their evaluations of jury experience (Shuman & Hamilton, 1994). If Besley  
37 and McComas (2005) are right that perceptions of procedural fairness generally  
38 override personal dissatisfaction with outcomes, these findings are particularly wor-  
39 risome, as they point to jurors' concern about the justice being done by their juries.  
40 At worst, these results show that deliberation may be more challenging, the more  
41 there is at stake. Moving from the criminal jury to policy juries, this might cause  
42 deliberation's advocates to be especially vigilant about process design for those issues  
43 that have the highest personal or political stakes. At the very least, this finding  
44 underscores the importance of exploring how different types of issues shape  
45 deliberation.  
46

When thinking about the net impact of these findings on deliberative theory, one could conclude that the most important differences may be in the nature of issues, more than in the nature of the deliberators. At least within the structured context of jury deliberation, variations in the types of issues at play in trial yielded at least as much variation in deliberative experience as did any number of demographic differences among jurors.

### The limits of self-reporting

These results are not meant to be definitive but they represent one of the first large-scale empirical investigations of contrasting claims about deliberation in the context of an institutionalized citizen-deliberative practice. Nonetheless, the self-report data used herein present a limitation that must be acknowledged. In particular, there is the risk that self-reported satisfaction and emotion are a reconstruction more than a reliable measure of the subjective states and experiences jurors had while serving. We believe the high salience of jury service makes it easier for jurors to recall their experiences accurately, but there is no denying that subjectivity is malleable over time.

Some critics may be tempted to go farther and claim that the reason we failed to find gender difference is because the women in our study were suffering from “false consciousness” (Augoustinos, 1999), which—by definition—would taint their self-report data. In other words, women are subordinated in deliberation, but they are just so thoroughly accustomed to this status that they cannot see it themselves. To completely disprove the false consciousness counterargument, we would have to observe and analyze the actual jury deliberations, similar to how Mendelberg and Oleske (2000) employed rhetorical analysis to explore the role of race in public deliberation. Unfortunately, this is all but impossible, given that courts have allowed only a handful of jury deliberation observations in the past century. One set of findings that may help to refute the false consciousness charge is the absence of consistent group composition effects. This suggests that the relative presence of men in the group was not profoundly shaping women’s experiences in jury deliberation. Additionally, we believe that this is actually a misapplication of “false consciousness,” which has been documented in relation to larger belief structures, such as ideologies, but not simple behavioral and experiential recall data, such as ours (Jost, 1995; Jost & Banaji, 1994; Major et al., 2002).

### Conclusions

This study set out to advance the conversation about deliberation and difference by empirically testing key assumptions of deliberative and difference theorists. Our findings suggest that concerns that deliberation inherently privileges men over women and reason at the expense of emotion are likely incorrect, at least in the context of one’s subjective experience of jury deliberation. Arguments of proponents of deliberation who hail the process as an equalizing discursive space were bolstered,

though we found some evidence that on the most difficult cases, citizens may be more likely to become frustrated with the deliberative process and its outcomes.

These findings shift the burden of evidence somewhat by challenging deliberation's critics to find compelling examples of difference effects in well-structured and consequential deliberative spaces. Based on our data, we expect that such examples *will* arise through careful investigation, though the effects may be relatively modest in size. We expect that difference effects will arise under specific circumstances, likely involving the composition of the group and the nature of the issue under discussion. Such findings would sensitize deliberative theorists to especially problematic situations and challenge them, in turn, to devise means of mitigating these problems. In this way, deliberative theory and practice may ultimately benefit from a refined difference critique.

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