

# What Does It Mean to Deliberate? An Interpretative Account of Jurors' Expressed Deliberative Rules and Premises

Leah Sprain & John Gastil

*To advance deliberative theory and practice, this study considers the experiences of trial jurors who engaged in deliberation. Conceptualized as a speech event, this article inductively explores the deliberative rules and premises articulated by jurors. Jurors believe deliberation should be rigorous and democratic, including speaking opportunities for all, open-minded consideration of different views, and respectful listening. Jurors actively consider information, but face-to-face deliberation is essential for thoroughly processing evidence. Although emotions should not influence the final verdict, participants report that emotions often reinforce deliberative norms. These results inform theory and deliberative experiences in and beyond the jury.*

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For the past 3 decades, political philosophers and theorists have developed visions of democratic deliberation (e.g., Barber, 1984; Cohen, 1997; Dryzek, 1990; Gutmann & Thompson, 2004; Habermas, 1979; for reviews, see Chambers, 2003; Freeman, 2000). As Chambers explained, “Deliberative democratic theory has moved beyond the ‘theoretical statement’ stage and into the ‘working theory’ stage” (p. 307). Yet, even

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with a “working theory,” scholars are still in the early stages of empirically investigating the contours of democratic deliberation.

Much of the empirical research to date has focused on anticipated benefits and outcomes of deliberation (Delli Carpini, Cook, & Jacobs, 2004; Mendelberg, 2002), such as increased civic engagement (e.g., Gastil, Deess, Weiser, & Simmons, 2010) or changes in political knowledge, opinions, and attitudes (e.g., Barabas, 2004; Luskin, Fishkin, & Jowell, 2002). This research typically treats deliberation as a dichotomous variable, assuming that a deliberative format begets deliberation (e.g., Gastil & Dillard, 1999). This operational over-simplification overlays a loose *conception* of deliberation, which encompasses not only structured public meetings (Crosby & Nethercutt, 2005), but also routine public forums (McLeod et al., 1999), government meetings (Tracy & Ashcraft, 2001), informal conversations (Mutz, 2006), and even mass-mediated communications (Page, 1996).

In the midst of this diffuse literature, there have been efforts to more precisely define deliberation both conceptually (Burkhalter, Gastil, & Kelshaw, 2002) and operationally (Muhlberger, 2005; Stromer-Galley, 2007). A particularly promising line of work in this area aims to bridge deliberative theory and practice by drawing out the experiences and understandings of participants in deliberative events. Mansbridge, Hartz-Karp, Amengual, and Gastil (2006) took this approach when asking forum moderators to observe and comment on highly structured public meetings, with the focus on what made them more or less “deliberative.”

This essay builds on these efforts, but shifts the context from public meetings to an older and more conventional deliberative setting: the jury. Trial juries offer a unique setting for scholars to learn about how lay citizens understand and experience deliberation. Even if one questions the deliberative quality of juries, as do Konieczka (2006) and Sanders (1997), one cannot deny that in the American context, “jury deliberation” is a core element of the vernacular understanding of what it means to deliberate, although we routinely speak of deliberation occurring in a variety of group decision-making contexts.

Like Mansbridge et al. (2006), we aim to bring together deliberative theory and philosophy with the actual *practice* of deliberation. At the conclusion of their study, Mansbridge et al. reflected that, having probed facilitators’ views of deliberation, “It would also be fruitful to probe participants’ own understandings of their deliberation” (p. 39). The authors acknowledged “participants might have a less well developed conception of deliberation, but their lay understandings would be valuable in their own right as representations of the prevailing cultural norms among the larger public” (p. 39). The self-understandings of jurors will help us not only understand how jurors conceptualize the task of deliberation, but also how the public understands, by analogy, other deliberative practices in the United States. In this sense, we share Tracy and Ashcraft’s (2001) approach of “studying a particular communicative practice . . . to develop insights that could be fed back to participants involved in this kind of practice” (p. 313).

This general approach has proven fruitful in other studies of group deliberation as a means of yielding practical insights (Renz, 2006; Ryfe, 2006). We depart from the

single-case study approach, however, to examine the experiences of a relatively large sample of jurors. In this study, we examine how lay jurors describe their experiences deliberating during a large number of civil and criminal trials to reveal the broadly shared cultural norms of jurors. We conceptualize jury deliberation as a *speech event*: a cultural practice with structured ways of communicating (Hymes, 1972). Drawing on jurors' open-ended comments about jury service, we explore the communicative rules and premises about jury deliberation as reported by participants—an approach that has yielded success for other jury researchers (e.g., Sunwolf & Seibold, 1998). This descriptive account of jury deliberation is then related back to disputes within deliberative theory about the importance of interaction and the role of emotion, and to practical efforts to create forums for deliberation.

To situate our research, we begin by examining understandings of deliberation within the theoretical literature, highlighting two key points of scholarly disagreement that we aim to address. Next, we briefly review the relevant research on jury deliberation, particularly research on communication premises and rules for talk during deliberation. We then discuss our research approach and the rules and premises of jury deliberation that it yields in our data. Finally, we suggest the implications of our results for deliberative theory and practice.

### Two Points of Dispute Within Deliberative Democratic Theory

The deliberative critique of democratic theory began as a robustly *communicative* argument, with Habermas (1979) stressing the role of public, reasoned argument, and Barber (1984) and Mansbridge (1983) stressing the importance of social relations in what had become technical, formal conceptions of democratic processes and institutions. Communication scholars arriving on the scene continued to develop these ideas by stressing listening and respect as key to democratic public life, often drawing on long-standing scholarship on groups, decision-making, and conflict<sup>1</sup> (Gastil, 1993; Osborn & Osborn, 1991; Pearce & Littlejohn, 1997).

In one widely cited formulation of deliberative democracy, Cohen (1997) offered what he calls the *ideal deliberative procedure*, linking ideal notions of democracy with deliberative mechanisms. He argued that deliberation should be free, reasoned, and equal, arriving at a rationally motivated consensus. For Cohen, this ideal deliberative procedure should result in sincere efforts to advance the common good, given the conditions of equality and freedom of expression. Summarizing the view of deliberation that crystallized in the years since Cohen's essay, Ryfe (2002) explained that "good deliberation is characterized by the advancement of claims, presentation of evidence, consideration of counterfactual data, and so forth" (p. 359; see also Burkhalter et al., 2002; Chambers, 2003; Dryzek, 1990; Fishkin, 1991; Mendelberg, 2002; Muhlberger, 2005).

Beneath this generalization, however, lay theoretical disagreements about the boundaries of the deliberative process and the role emotion can and should play within it. First, deliberation is typically treated as discursive interaction, but a stark departure from this tradition is Goodin (2000, 2003), who argued that deliberation

is not comprised solely of discussion. Rather, he argued that deliberation consists of *consideration* and discussion. Consideration does not necessitate talk; consideration can happen within an individual as an imagined negotiation of arguments. Goodin does not suggest that discussion is unimportant. Goodin and Niemeyer (2003) argued:

Hypothetical imagined discourse (“deliberation within”) can never substitute for the democratic validation that comes from more overtly political processes . . . [yet [yet it] might be a more important part of the process than the dialogic and discursive element that is so cherished by contemporary deliberative democrats. (p. 628)

Results of research on a citizen jury deliberation demonstrated a larger shift in attitudes from before jury selection to after the “information phase” than between the “information phase” and the end of the “discussion phase.” These results led Goodin and Niemeyer to conclude that discussion is of less consequence than typically theorized.

Deliberative theorists are also divided over the appropriate role of emotions within deliberation. Traditionally, scholars have presented deliberation as guided by logic and reason (e.g., Cohen, 1997; Habermas, 1979). This has led to empirical approaches that seek to assess deliberation in terms of the argument-centered character of discussion (Dutwin, 2003). Other theorists, however, argued that deliberation routinely does—and *should*—involve emotions (e.g., Abu-Lughod & Lutz, 1990; Dahlberg, 2005; Gastil, 2000; Theiss-Morse, Marcus, & Sullivan, 1993; Thompson & Hoggett, 2000).

Ryfe (2002) characterized this divide as rational versus relational models of deliberation. Drawing on ethnographic observations, Mansbridge (1999) argued it is often impossible to distinguish between emotion and reason in practice. Mansbridge et al. (2006) found that forum facilitators can identify many instances where emotional expression can help a group of citizens work on their tasks or deepen their discussions. Moreover, Steenbergen, Bachtiger, Spornli, and Steiner (2004) argued that emotions motivate participants to participate in deliberation—even motivating the use of reason.

A particular emotion that receives attention in the literature is empathy. Mendelberg (2002) argued that empathy is necessary for deliberation if participants are to respect each other. Bell (1987) distinguished two different types of empathy that may relate to deliberation: cognitive and affective. Cognitive empathy is when someone takes the perspective of another person, whereas affective empathy is when someone actually experiences another participant’s emotions. Relating this back to Goodin’s (2000, 2003) conception of consideration, perspective-taking might be a kind of cognitive consideration, but affective empathy could motivate a person to consider more deeply how others’ experiences differ from one’s own. (We return to emotion later and directly address it in RQ3.)

### **Deliberation by the Jury**

Careful scrutiny of juries could aid in the resolution of these conceptual debates about the roles of consideration and emotion in deliberation. After all, juries involve a period of quiet observation (the trial) followed by one of mandatory discussion (the

formal jury deliberation), and it will be revealing to see how jurors themselves conceptualize deliberation across these phases of the trial. Juries also often hear cases that can generate strong emotions (Marder, 1997; Vidmar & Hans, 2007), and it could be revealing to see how juries think of these emotions in relation to the deliberative task the court gives them.

### Juries as a Special Form of Citizen Deliberation

Before turning to our own study of jury deliberation, it is useful to consider the jury in its own right. At the outset, one must note that the conventional trial jury differs from modern deliberative designs built for public policy discussion (Gastil & Levine, 2005). Unlike free-flowing public meetings, trial judges typically give jurors very specific instructions on how to view evidence, a strictly limited information base, an admonishment to rely only on arguments presented during the trial (rather than jurors' own experiences or self-generated arguments), and a nearly unlimited length of time to deliberate (Burnett & Badzinski, 2000; Jonakit, 2003; Sunwolf & Seibold, 1998; Vidmar & Hans, 2007). In some respects, the judge is analogous to a deliberative meeting organizer or a facilitator, but unlike a process leader, the judge sits as an *authority* presiding over the jury—with the power to dismiss jurors and overturn verdicts.

By contrast with the jury, other forms of deliberative democracy tend to be more explicitly political or policy-driven, working toward the clarification of public priorities or recommending that a community or larger political body undertake specific actions (Ryfe, 2002). A jury has a limited scope of judgment concerning the case at hand. There are exceptional cases wherein juries ignore (or “nullify”) the law to render what they consider “justice” (Vidmar & Hans, 2007), and in those instances, it is more clearly seen that conventional juries are always making the political choice of implicitly endorsing the law. Nonetheless, the jury's scope remains narrow relative to the wide-ranging discussions that are part of deliberative public events.

Finally, the jury deliberates as a quasi-*private* body. Although the names of jurors are public record (Gastil et al., 2010) and they sit in a public courtroom, when it comes time for a jury to deliberate, it does so in private. Even researchers rarely get to see what jurors discuss, and it has only recently become common for the media to interview jurors about their experiences (Vidmar & Hans, 2007). Although some public deliberations involve jury-like privacy at times (e.g., Crosby & Nethercutt, 2005), trial juries certainly differ in the degree to which their deliberations are closed off and carefully guarded from public access.

### Establishing Deliberative Norms

As to the actual behavior of juries behind closed doors, research to date suggests that juries generally take seriously the instructions they receive from judges, particularly once they enter the jury room (Diamond & Levi, 1996; Elwork, Alfini, & Sales, 1982). Even with these general instructions in hand, however, juries must develop a set of rules for how to complete their deliberative task. As Sunwolf and Seibold

(1998) argued, this is surely a structural process in which jurors draw on prior social knowledge to fill the gaps in (or supplant) their formal instructions. In the only published study of its kind to date, Sunwolf and Seibold interviewed potential jurors in the lobby prior to jury service to learn about their intuitive rules for jury talk. Individuals were given five fictional situations that a jury might find itself in (e.g., selecting a leader, dealing with deviant members, and handling disagreements about length of deliberation) and asked to verbally explain how they would handle each situation. The researchers found that participants preferred selecting a foreperson on a random or voluntary basis, wanted secret ballots during deliberations, and offered creative ways to continue deliberations even if one member no longer wanted to participate.

Consistent with these findings, other research indicates that jurors *talk* about procedures during deliberation. For instance, one set of jurors interviewed by Pettus (1990) first deliberated on how to deliberate, ultimately deciding to “‘build a ladder’ by going through each of the potential charges” one by one (p. 92). Other juries, however, are “verdict-driven,” choosing to use public balloting to move toward a decision, which has been shown to polarize a group and motivate minority parties to consider switching to the majority (Hastie, Penrod, & Pennington, 1983).

There is also evidence that the norms juries develop often have a deliberative democratic character. For example, Velasco’s (1995) study of jury size and participation found that no juror remained silent in juries of six; at least one person did not speak in more than one-half of larger juries. Manzo’s (1996) study of two actual juries videotaped by *Frontline* found that even in its early stages, deliberation is highly structured and democratic in its turn-taking, which was influenced by the forepersons, implicit norms, and nonverbal gestures.

It is apparent that juries *do* formulate rules and other procedures for deliberation, but the nature of those remains unclear. In particular, we hope to clarify the role and nature of communication in deliberation. This leads to our first research question:

*RQ1: What are the rules for and premises about communication during jury deliberation?*

### **Deliberative Consideration and Emotion in Juries**

Returning to the specific deliberative issues of consideration and emotion, official juror instructions specify that deliberation does not begin until jurors are in the jury room (Goodin & Niemeyer, 2003). Nonetheless, the jury literature offers two ways to characterize jurors during the trial: “passive participants” and “active information processors” (Diamond & Casper, 1992; Hastie et al., 1983). In recounting these perspectives, Diamond and Casper commented that jurors are sometimes viewed as tape recorders and sponges, recording all information equally. Other research has shown jurors to be active information processors (see also Hastie et al., 1983; Pennington & Hastie, 1986). According to this perspective, jurors are “receptive but not uncritical” to information presented during the trial (Hastie et al., 1983). For example, an active

juror may evaluate the content of expert testimony or piece together a story from the evidence presented. In previous years, some researchers even concluded that the jury's face-to-face deliberations do not matter—that the verdict is entirely the product of pre-deliberation views formed during the trial (e.g., Davis, Stasser, Spitzer, & Holt, 1976; Kalven & Zeisel, 1966; Kerr 1981). Building on this tradition, Burnett and Badzinski (2000) offered a model of jury decision-making where jurors make individual decisions prior to deliberation, form stories that support these conclusions, and then present basic arguments during deliberation that regard their individual stories.

Nevertheless, evidence of jurors influencing each other during deliberation abounds. In particular, roughly 1 in 10 juries ends up with a verdict *opposite* of the majority of jurors' pre-deliberation positions—a result that has been found both in mock juries (MacCoun & Kerr, 1988) and field studies of actual juries (Kalven & Zeisel, 1966; Sandys & Dillehay, 1995). Findings such as these led many scholars to conclude that deliberation is a fundamental aspect of jury decision-making (e.g., Diamond, 1997; Diamond & Casper, 1992).

It is unclear how jurors themselves conceptualize their deliberation. Is the trial a deliberative phase, or is it merely a passive fact-finding period? In the juror's mind, when does deliberation "begin?" Thus, our second research question asks the following:

*RQ2: How do jurors describe the deliberative process as it spans across the trial phase to a face-to-face discussion?*

As to the role emotion might play in such deliberation, there is ample evidence that the jury experience can involve strong emotions. Simply listening to a trial of a violent crime or a heinous fraud can arouse emotion, as can the generic burden of having to judge the fate of a defendant. Marder (1997) found that strong emotions during deliberations led to forepersons developing mood-management strategies and juries, occasionally, resorting to by "group hugging sessions" (p. 481). Even everyday trials that do not make the national headlines, such as drunk-driving cases, can be heart-wrenching for jurors. Chopra (2004) reported that in such a case, jurors became frustrated and angry at the moral dilemma the trial created for them: Would they "let down" the victims' relatives, or would they allow the rather hapless defendant be "made an example" by the court (p. 10)? As one judge related to a reporter in Minnesota, "People who work in courts witness a lot of reality that our fellow citizens usually don't have to see. We take away people's innocence after some of these trials" (Meier, 2002).

In relation to deliberation, however, relatively little is known about emotion on juries. Burnett and Badzinski (2000) suggested that there are two layers of argument in deliberation, where jurors listen to complex arguments presented during the trial and then draw on this information to formulate basic assertions during deliberation. This model suggests that emotions are not part of the deliberation process. For our particular purposes, however, it is altogether unclear whether jurors brush aside their

emotional reactions as intrusive to rational deliberation or whether they embrace those emotions and the empathy or insights they might spark. Thus, our third research question asks the following:

*RQ3: What are the rules and premises for emotion during jury deliberation?*

### **Research Approach and Method**

Our approach to answering these three research questions was to inductively construct an account of the rules and premises about communication during deliberation expressed by jurors. Within that general approach, the questions gave us a manageably narrow topical focus—deliberation’s procedures, temporal boundaries, and emotions. Following Hymes (1974), we conceptualized jury deliberation as a speech event—an activity governed by rules or norms for the use of speech. Consider an ethnographer aiming to study the role of communication in a ritual ceremony. Through observations and interviews, the ethnographer would use heuristics to tease out the important communicative elements of the event, attempting to understand the ritual in the participants’ terms. The result would be a thick description of the event, grounded in empirical materials.

We aim to offer a similar report, but this analogy highlights important differences necessitated by our context. Unlike an ethnographer, we cannot watch actual juries deliberate, as it is generally illegal to do so. Since Kalven and Zeisel’s (1966) landmark study, researchers have rarely been allowed to observe or tape actual deliberation for fear of altering judicial outcomes. This leaves researchers with two options: Stage mock juries or study actual jurors through other methods (for a discussion of the benefits and limitations of each approach, see Devine, Clayton, Dunford, Seying, & Pryce, 2001). Believing that deliberation is qualitatively different for actual juries than mock setups, we chose to work with actual jurors understanding that we forgo direct observation.

Speech codes theory (Philipsen, 1997; Philipsen, Coutu, & Covarrubias, 2005) provides support for our approach to look to participant comments for evidence of local norms of communication. It proposes that the terms, rules, and premises of a speech code (a “system of socially constructed symbols and meanings, premises, and rules, pertaining to communicative conduct”; Philipsen, 1997, p. 126) are woven into speaking itself. Thus, interpreters can look to discourse itself to formulate a local code of premises and rules about communicative conduct.

### **Juror Survey Characteristics**

We were, however, able to work with an exceptional dataset, consisting of over 3,202 post-jury service surveys of King County, Washington residents, 1,206 of whom deliberated on a total of 289 trials. The response rate was 69% for the survey. Fifty-three percent of the prospective jurors were women, and 86% were White, with 7.6%



Asian American, 2.7% African American, 2.1% Native American, and 1.8% Hispanic. The median educational level was a college degree (B.A., B.S., or A.B.), with 37.7% having less formal education and 31.0% having more. The median age was 49, with the middle-75% of jurors between 31 and 64 years of age.

Our interest in this survey was its inclusion of multiple open-ended questions<sup>2</sup>, none of which directly asked jurors about deliberation, *per se*. Some researchers have probed popular understandings of broadly shared cultural concepts like “democracy” and “citizenship” through direct questioning about the terms themselves (e.g., Conover, Crewe, & Searing, 1991; Rosenberg, Ward, & Chilton, 1988). For our approach, however, it is preferable to examine how the native term *deliberation* is used without prompting respondents to reflect on its meaning as though it were a problematic concept. To the extent that jurors spontaneously mention aspects of deliberation, their comments can be taken to have importance to jurors in the context of jury deliberation, rather than being merely a direct response to a researcher’s focused question. That said, our approach comes with limitations. Because the survey questions do not explicitly ask about norms for deliberation, we are not able to make arguments based on the proportion of respondents who mentioned a particular rule or behavior.

### Creating Qualitative Datasets

In answering these questions, jurors talked about varied aspects of the trial. They mentioned frustration at waiting to be called in, praised and criticized the courthouse decor, and expressed appreciation for the courthouse staff, judge, and fellow jurors. Jurors frequently and directly referenced deliberation.

Our first analytic step was to tag the open-ended responses that included comments relating to deliberation. This was not as simple as merely tagging the responses that included the word “deliberation.” Instead, conceptualizing deliberation as a speech event led us to include all comments that reference an element of this speech event into the deliberation dataset. To make this distinction, we used Hymes’s (1972) SPEAKING framework—a descriptive-interpretive device used to understand the various elements of a speech event. The elements of this framework are as follows: S = setting and scene, P = participants and participant identities, E = ends, A = act sequence, K = key or tone, I = instrumentalities, N = norms of interaction and interpretation, and G = genre. Comments that referenced any one of the categories were included in the dataset (e.g., “The court personnel, judge, and lawyers, as well as my fellow jurors, were helpful, intelligent, and open-minded, all of which made the experience pleasant,” and “To remember that we did not reach the verdict alone—therefore, we are not personally responsible for the outcome—but [that] the verdict was reached through the collaborative and collective opinions of 12, which is why the jury system works”); other comments were excluded (e.g., “My expectations were not very high, and the chairs to sit in were adequate. The wait was ok as long as someone informed us periodically what was happening”). The final dataset consisted of 621 total comments.

All of the responses that did not reference an aspect of deliberation as a speech event were put into a separate dataset. This dataset was used to confirm our answers to RQ2 and RQ3. In both cases, after analyzing the SPEAKING dataset, we checked to see whether this broader dataset confirmed or challenged our conclusions about emotions and when deliberation begins. In both cases, it provided additional evidence of our conclusions.

Each of our research questions required us to identify rules and premises for speech behavior. To do this, we used conventional practices in the ethnography of communication. An ethnographer of communication orients to local meanings by paying attention to the ways participants engage in talk, how they orient to their own and others' conduct, and how they meta-communicate about conduct (Philipsen & Coutu, 2005). Participants suggested rules of deliberation when they stated that a particular speech behavior must occur during deliberation, stated deliberation was successful or not successful because participants followed a rule, quoted someone else reporting a rule for speech behavior, or complained another juror violated a rule. Premises are when participants stated an ideal of the proper role of communication in deliberation. In identifying a rule or premise, we relied on multiple instances of comments.

Once we formed interpretative answers to each of our research questions, we went back over the dataset to see how often jurors referenced these premises and rules. Given our data, frequency counts cannot readily be used to support generalizations about the proportion of jurors who adhere to a given rule. Nonetheless, we include how often these key findings appear in our dataset as a way of demonstrating the validity of our interpretative claims and helping the reader assess the contribution of our research.

## Analysis

Our treatment of deliberation as a speech event suggests that rules for speaking define deliberation. This analytic classification is supported by the ways in which the participants used the term *deliberation*. Our analysis of the 49 uses of the term indicates that it was used to describe the phase where the jury goes back to the "jury room" to "decide." The terms *deliberation phase* and *deliberation process* were also used to refer to this time. The key feature of this "process" was that jurors were allowed to talk to each other for the first time, suggesting that the *ability to talk to others* was itself a key characteristic of deliberation. Unlike the trial, deliberation was a communal activity defined by interaction. Jurors noted that they were first permitted to "share" during "our deliberation."

Deliberation was also used as a verb, functioning as a meta-pragmatic term for talk. Some participants called deliberation "discussions"; others associated deliberations with other types of talk, notably as "debate" (3 comments). These meta-communicative comments about deliberation and the assertion that deliberation marks the ability to talk, in particular, justify our analytical classification of jury deliberation as a speech event. Following our research questions, our analysis reports

the rules and premises for communication in three aspects of deliberation: face-to-face deliberation, when deliberation begins, and emotion.

### *Procedural Norms in Face-To-face Deliberation*

Judges provided legal guidelines for how a jury should make decisions. In a civil case, the final decision rule is based on the “preponderance of evidence”; in a criminal trial, decisions must be made “beyond a reasonable doubt.” Juror comments reinforced these rules, including attributing quotes to judges with instructions and using technical terms, although some jurors did express some frustration with putting the decision rules into practice.

Important for our research questions, these decision rules did not provide jurors with rules for interacting:

Though we were given instructions from the court on the law and on the claims made by both parties, we were not given suggestions on how best to handle jury deliberations. As presiding juror, I felt a huge burden of responsibility to ensure a fair trial for all involved. It would have been helpful to have some suggested protocols or procedures to follow to ensure a fair and non-confrontational deliberation process.

This statement suggests that the judge did not provide procedures for the *process* of deliberating; instead, we can presume that jurors supplied and formed their own norms for communication and interaction during deliberation.

The previously cited juror provided a common premise about deliberation interaction: Deliberation ought to be fair. Thirty-four comments referenced the notion that deliberation should be fair, thoughtful, and objective. Just because a juror thought that deliberation ought to be non-confrontational, however, did not mean that jurors never confronted each other or disagreed. Instead, frequently, jurors reported disagreements during deliberation. In fact, 19 comments referenced a related premise: Disagreement is an essential part of the process of deliberation.

Despite this premise, not all jurors evaluated disagreements in the same manner. Consider the following two reports of disagreement:

1. I generally understood the other views but was a bit frustrated in that neither side really was able to move the other closer to their side for a verdict. The more we discussed the more we agreed to disagree amiably.
2. During deliberation, we had a pig-headed juror who refused to listen to reason or see the obvious, so we couldn't convict on certain counts . . . this left me and several of the other jurors very frustrated.

In the context of disagreement, jurors reacted to and evaluated the situations differently. Some jurors were impressed by how thoughtful their fellow jurors were during disagreements (4 comments; e.g., “especially impressed with the thoughtfulness and integrity of my fellow jurors”); disagreements enabled some jurors to learn and understand other points of view (9 comments; e.g., “desire to listen and understand others' views when they differed from mine”); and yet other jurors were frustrated by

disagreements (28 comments; e.g., “frustration with fellow jurors who could not accept the law as written and apply it”), explicitly connecting this frustration with being part of a hung jury (13 comments; e.g., “frustration at one juror holding out beyond reasonableness”).

Another appropriate response to disagreement was to “work together” to come to a “consensus.” To “come together,” jurors expressed the importance of allowing opportunity for participation. “No one dominated discussions, and everyone had a “chance to give opinion based on facts.” “We discussed the case for hours, everyone speaking their minds, even people who were obviously not assertive individuals.” From these comments, another rule of deliberation can be formulated: Everyone has the opportunity to speak during deliberation (10 comments). Interrupting another juror challenged this rule and, thus, formed a corresponding rule: Do not interrupt other people during deliberation. Instead, jurors should listen thoughtfully to each other (18 comments). This rule can be seen both in comments that praise fellow jurors for “respectfully listening” and “not interrupt[ing] one another.” However, this rule is even clear when jurors complain about it being violated. Jurors report “a pig-headed juror who refused to listen to reason,” and “I was frustrated with one of the members of the jury for constantly interrupting jury members.”

Strikingly, jurors had very positive things to say about fellow jurors (97 comments). Jurors reported that people “take it seriously” and are “good communicators.” Jurors were “respectful of other jurors,” “thoughtful,” and “tolerant” as they “worked together.” There were exceptions to these ideals (25 comments), but they usually focused on a negative experience with one fellow juror, as demonstrated by the comments in the previous paragraph.

### *Temporal Boundaries: When Deliberation Begins*

The formal rule provided by the judge is that deliberation does not begin until jurors enter the jury room after the closing statements. During the trial, jurors should listen to all of the testimony openly and without bias, not discussing matters with anyone, including each other, until the jurors enter the deliberation room. One juror even commented, “The judge often cautioned us not to rush to judgment before all the testimony was heard.” Some jurors expressed awareness that they “were not supposed” to deliberate until after watching all of the testimony. Even jurors who understood and supported the rules about when to deliberate simultaneously expressed a desire to talk about the trial before deliberation (5 comments).

Although most jurors understood that they were to wait until entering the jury room to discuss issues, this does not mean that they simply acted like “sponges,” observing the trial without judgment. Instead, juror comments support the notion that jurors actively process information. One juror remarked: “I was very open-minded to all the testimony. I was sad when the defense lawyer played the ‘race card.’” This comment reinforced the premise of open-mindedness while simultaneously noting an emotional reaction to a lawyer’s tactic. Other jurors expressed their emotional reactions and evaluations during the trial, which suggests active information processing.

Nonetheless, juror comments *do not* suggest that face-to-face deliberation is unimportant. As mentioned in the opening analysis, jurors suggested that the ability to talk defines deliberation. Forty-one comments referenced the rule that *deliberation requires interaction between all group members*. Jurors mentioned wanting to talk to each other, wishing that they could discuss the case during the trial. This sentiment was most clearly expressed by individuals who were selected as alternates at the completion of the trial and did not get the opportunity to deliberate. For example, an alternate described not deliberating as a “psychological blow.” One juror who did participate in deliberation even mentioned, “During the whole experience, the one thing I really dreaded was that in the end I would be selected the alternate and miss the deliberation.”

### *Emotion in the Deliberation Experience*

In answering questions about emotions experienced during deliberation and the trial, 10 jurors stated this rule: Emotions should not be the basis for the jury’s verdict. However, this rule was often stated in the context of trying to suppress or ignore emotions, as one juror explained:

It’s hard to verbalize . . . . I was trying not to focus on my emotions as we were not supposed to be biased in our decision making . . . . I was upset that something happened that I didn’t agree with and was frustrated that there was not enough evidence to make it clear to me which way to vote during deliberations.

In a similar vein, another juror said, “I felt empathy for both sides of the case, but you have to bottle it up! That is the most challenging part.” Many jurors expressed experiencing emotions—even if they tried to suppress or ignore them. One juror even stated that emotions are unavoidable: “I couldn’t say ‘no’ emotions simply because emotions are, I believe, a part of the human condition.”

In terms of understanding deliberation, it is less important to learn that jurors experience emotion than to hear the ways in which they recount experiencing emotion. Emotions experienced during deliberation center on two topics: emotions related to group process and emotions about the content of the case. Many of the emotions related to the process of deliberation reinforce the previously stated premises and rules of deliberation, rather than undermining them. Jurors reported feeling respect between jurors, validation at interpreting evidence similarly, and satisfaction at working well as a group. Seventy-three comments connected positive emotions to group processes. Of the 64 comments that connected negative emotions to the same group processes, many negative experiences also reinforced the previously stated rules and premises. Jurors frequently expressed negative emotions—frustration, anger, and irritation—when other jurors broke norms and rules. Often, these reported emotions, both positive and negative, served to reinforce the goals of deliberation as understood by the group and suggested by the judge. Moreover, 71 comments expressed concern about making the right decision, often reinforcing the importance of following the rules and taking deliberation seriously.

Perhaps more concerning to legal professionals are the emotions expressed about the content of the case. In the deliberation dataset alone, 41 comments included an emotional reaction to the content of the case, including 15 comments expressing empathy or sympathy for one of the parties. Legal professionals fear an emotional reaction will overshadow the law, which breaks the rules of deliberation and the ideal of an impartial jury evaluating solely on evidence. For example, a juror reported the following: “Three jurors were not making decisions based on the law, but on emotions, including dislike of police.” In this case, emotional reaction seems to be overshadowing the law. Yet, notably, the use of emotion as a driving force for decision-making was marked as inappropriate.

## Discussion

Frustrated with the limitations of theoretical debate on the experience of ideal deliberation, Delli Carpini et al. (2004) raised this question: “What is the deliberative experience that millions of Americans currently engage in actually like?” (p. 336). The preceding study of the most powerful institutionalized form of lay citizen deliberation provides one part of the answer to that question. The open-ended comments collected from over 1,000 citizens serving on county and municipal trial juries provided answers to the three research questions we posed about whether citizens develop interactive norms for face-to-face deliberation, when jurors believe deliberation begins, and the role of emotion. In this final section, we briefly summarize those main findings, and then consider the theoretical and practical implications of each.

### *Summary of Findings*

Based on our review of jurors’ comments, we draw the following three interpretive claims about jury deliberation that lay citizens commonly hold:

1. *Procedural norms for face-to-face deliberation*: Jury deliberation should be not only analytically rigorous, but also democratic—with speaking opportunities for all jurors, open-minded consideration of different views, and respectful listening oriented to creating mutual understanding.
2. *When deliberation begins*: Jurors should consider everything they hear as the trial progresses, but the face-to-face communication is essential to processing that evidence fairly and thoroughly.
3. *Emotion*: (a) Appreciation of fellow jurors can reinforce deliberative norms, and process-related frustration can lead jurors to reaffirm those norms when other jurors violate them. (b) Although emotions should not directly influence their final verdict or judgment, emotions can motivate jurors to take seriously their responsibilities and to appreciate the gravity of their decisions.

Jurors upheld these communicative norms, although their fellow jurors did not always follow them. It was sometimes the case that jurors invoked the norms

to critique of the behavior of a fellow juror or identify the cause of frustration. After all, naming transgressions, or pointing out one's own errors, is a common part of the norm-setting process (Giddens, 1984). Other times, jurors reported pleasant *surprise* at how open, fair, smart, and patient their fellow jurors appeared, which suggests that the jury experience could—for at least some citizens—reinforce the sense that these deliberative norms are realizable in practice.

### *Establishing Deliberative Procedures*

The finding that jurors quickly establish deliberative norms underscores the enduring cultural understanding of the jury deliberation speech event. From the standpoint of deliberative theory, it may be reassuring that these norms match up relatively well with abstract definitions of deliberation—in particular, Burkhalter et al.'s (2002) definition of democratic, face-to-face, public deliberation. In broad terms, this validates the conception of deliberation as both an analytic/task-oriented and social/relational process. Operational definitions of *deliberation* should recognize this dual nature of the process. Ideally, one would not assess deliberation strictly in terms of reasons given (Dutwin, 2003) or principally in terms of process satisfaction (Gastil, Burkhalter, & Black, 2007), but, rather, do both.

As to the practical significance of this finding, it is important to recognize the persistence of deliberative norms in the context of trial juries. There is much anxiety about the prospects for deliberative norms in the contemporary United States (Gastil & Keith, 2005; Ryfe, 2007). Our findings suggest that beneath the corroding discourse of American campaigns lies a broader cultural understanding of and commitment to the principles of deliberative democracy. Just as Bormann (1996) identified a “public discussion model” in our culture for how to talk about issues in public, it appears that jurors have a somewhat broadly shared cultural understanding of how to conduct jury deliberations. Those understandings should serve well civic reformers who hope to inspire the public to revitalize or renew its deliberative traditions (Leighninger, 2006).

From the standpoint of a practitioner hoping to promote public deliberation and dialogue (e.g., Pearce & Littlejohn, 1997), our first research finding provides a set of cultural premises and rules about the role of communication in deliberation. Practitioners creating deliberative settings would benefit from working from and with these premises when developing new deliberative experiences as these rules and premises suggest cultural expectations held by participants.

### *The Importance of Face-To-face Interaction*

The second finding reported earlier underscores the fact that jurors view themselves not only as silent information processors—sifting and weighing the information they are being given during the trial—but also as an interacting body that must meet face-to-face to fulfill its civic responsibility. Jurors relished the opportunity to talk with their peers and work through the issues raised during trial.

Regarding deliberative theory, it appears that Goodin (2000, 2003) was correct in asserting that quiet consideration without (or prior to) interaction is part of the deliberative process. It is also clear, however, that this is not enough for the average citizen, at least in the context of the jury. As the lay public understands its responsibility, jury deliberation *requires* interaction—a public expression and interrogation of one’s private suppositions, doubts, or even tentative conclusions. Harkening back to the early deliberative theory of Habermas (1979), it would appear that the “ideal speech situation” requires speech after all.

Beyond the jury context, this finding should inform practical debates about deliberation. Page (1996) argued that the most significant deliberation happens passively, through media use, and Mutz (2006) demonstrated that media provide the best chance of hearing opposing views, making it an especially important deliberative venue. This may be true, but when promoting deliberative designs and ideals to the mass public, it is likely that citizens will expect there to be (or even require) an interactive component. Based on the lay public’s understanding of the jury, where the term *deliberation* has staked its cultural base camp, a deliberative democracy would be a highly interactive one, not merely a “reflective” one (Goodin, 2003).

#### *Frustration, Empathy, and Deliberative Norms*

Our third main finding was that jurors have many different views about the relationship between emotion and deliberation. Many acknowledge that facts should guide decisions, and yet mention various emotional reactions to evidence and emotional motivations to participate in deliberation. In practice, it was impossible for many jurors to fully separate reason from emotion.

Our findings, nonetheless, suggest two ways in which theorists might disentangle them and further clarify the positive roles that emotion can play in deliberation. First, jurors’ emotions were often expressed with regard to the establishment, practice, or violation of norms for jury deliberation. Previous to this study, deliberation scholars had viewed mutual respect as a precondition for consideration of diverse views—a kind of fuel for deliberative social behavior (e.g., Barber, 1984; Mansbridge, 1983; Weithman, 2005). Our findings suggest that emotion can not only facilitate deliberation in this sense, but can also *reinforce* more fundamental deliberative norms.

Another emotion that appears particularly relevant to deliberation is empathy. By focusing on respect and listening, some theorists suggest that empathy between participants can facilitate deliberation. Our research suggests that there is a kind of empathy related to but *distinct* from this variety—a generalized sense of identification that does not necessarily bias judgment. Numerous jurors expressed empathy toward *participants* in the trial—victims, defendants, and witnesses. This empathy did not necessarily correlate with a verdict; as one juror noted, “[I felt] empathy for the defendant even though we fairly delivered a guilty verdict.” Thus, empathy could very well help jurors remember the gravity of the decision they are making and recognize the losses, liabilities, and sacrifices of all participants in the trial. That might help to



motivate jurors to deliberate rigorously and respectfully, without compromising their ability to do so fairly.

Recent writings on deliberative theory and practice have noted the positive role emotion can play in deepening discussion of an issue (Mansbridge et al., 2006). Complementing this research, our study suggests that emotions of respect, appreciation, and empathy can also motivate participants to follow deliberative norms, even through challenging discussions of emotionally charged and complex cases.

In both the jury context and beyond, this suggests that emotion should not be pushed out of the deliberative process. In particular, the process appears to benefit from developing emotional commitments to deliberation itself, along with a general emotional identification with the stakeholders in a trial or a public debate that does not translate into bias or undue sympathy. Beyond the formal constraints of the courtroom, deliberative event organizers might be advised to build activities into their proceedings that foster these emotions. This intuition is already present in many public processes, particularly those that emphasize dialogue, such as appreciative inquiry, kaleidoscope, and the events sponsored by the Public Conversations Project, all of which are succinctly described by Pearce and Littlejohn (1997).

## Conclusion

In this essay, we have aimed to advance both the theory and practice of deliberation by scrutinizing lay understandings of juries, as a powerful site of deliberative cultural practice. For organizers of public deliberation projects, this study provides good news: Through participation in deliberation, jurors came to trust the good judgment and cultural competence of their fellow citizens, overwhelmingly singing their praises. This may be one of the keys to the transformative potential of participating in jury deliberation (Gastil et al., 2010). The jurors in our study also took deliberation very seriously, expressing the importance of paying attention, making the right decision, and participating in deliberation.

Future studies could further this line of research by probing lay understandings of deliberation in other contexts. This study demonstrates the utility of looking at participant discourse for evidence of rules and premises for communication. One line of research could probe how public understandings of deliberation rooted in the jury experience translate to related practices, such as *citizen juries* (Crosby & Nethercutt, 2005), *deliberative polls* (Fishkin, 1991), or *21st century town meetings* (Lukensmeyer, Goldman, & Brigham, 2005). Expanding the scope of inquiry in these ways will further test—and hopefully refine—the deliberative democratic ideal.

To the extent that the deliberative model of communication holds the promise of advancing the larger project of democracy, such work can aid not only our scholarly mission, but also the larger purpose of ensuring reflective, effective self-government in the modern world. Reprising our earlier findings, this study of jury norms for deliberation underscores three basic points. First, in modern democratic societies, citizens—like jurors—have intuitions about normative face-to-face behavior that

should be made explicit and drawn on to ensure both analytic rigor and democratic social relationships in public meetings. Second, just as jurors begin deliberating during the trial itself, so should public processes recognize that citizens begin the deliberative process as soon as they sign on to attend an event, gathering information and weighing arguments even before sitting down to talk with others. Finally, deliberative events must be wary of process frustration, which can undermine democratic norms, and they should embrace the role of empathy and other emotions that bring important issues to the fore in even a reason-based discussion. In sum, although many public deliberations bear only degrees of resemblance to the trial jury, they have much in common, and careful study of the latter can inform the practice and potential institutionalization of other forms of citizen deliberation.

## Notes

- [1] We are deeply aware of research on groups and small-group interaction that could be relevant to understanding deliberative practice. The purpose of this study is to further the link between deliberative theory and the actual practice of deliberation. For this reason, we have not focused on relevant small-group research that might predict how individuals interact and make decisions; instead, we are focused on how jury experiences might help refine deliberative theory and practice.
- [2] (a) What was the main reason for the rating you gave your jury duty experience? (b) At the conclusion of your trial (whether it ended in a final verdict, a mistrial, a hung jury, or your dismissal), did the judge say anything memorable to you or the jury as a whole? If yes, please summarize the judge's words. (c) Some jurors report that they have strong emotional reactions in relation to the trial they witnessed. Thinking back on the trial, what emotions did you feel during the trial? If you did feel emotions, in just a few words, what would be the strongest of those? [A sub-sample of jurors had surveys that included a similar question about emotions felt "during the juror deliberations."] (d) [Last question in survey] If there is anything else you would like to tell us about your experience in jury service, please do so in the space provided.

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