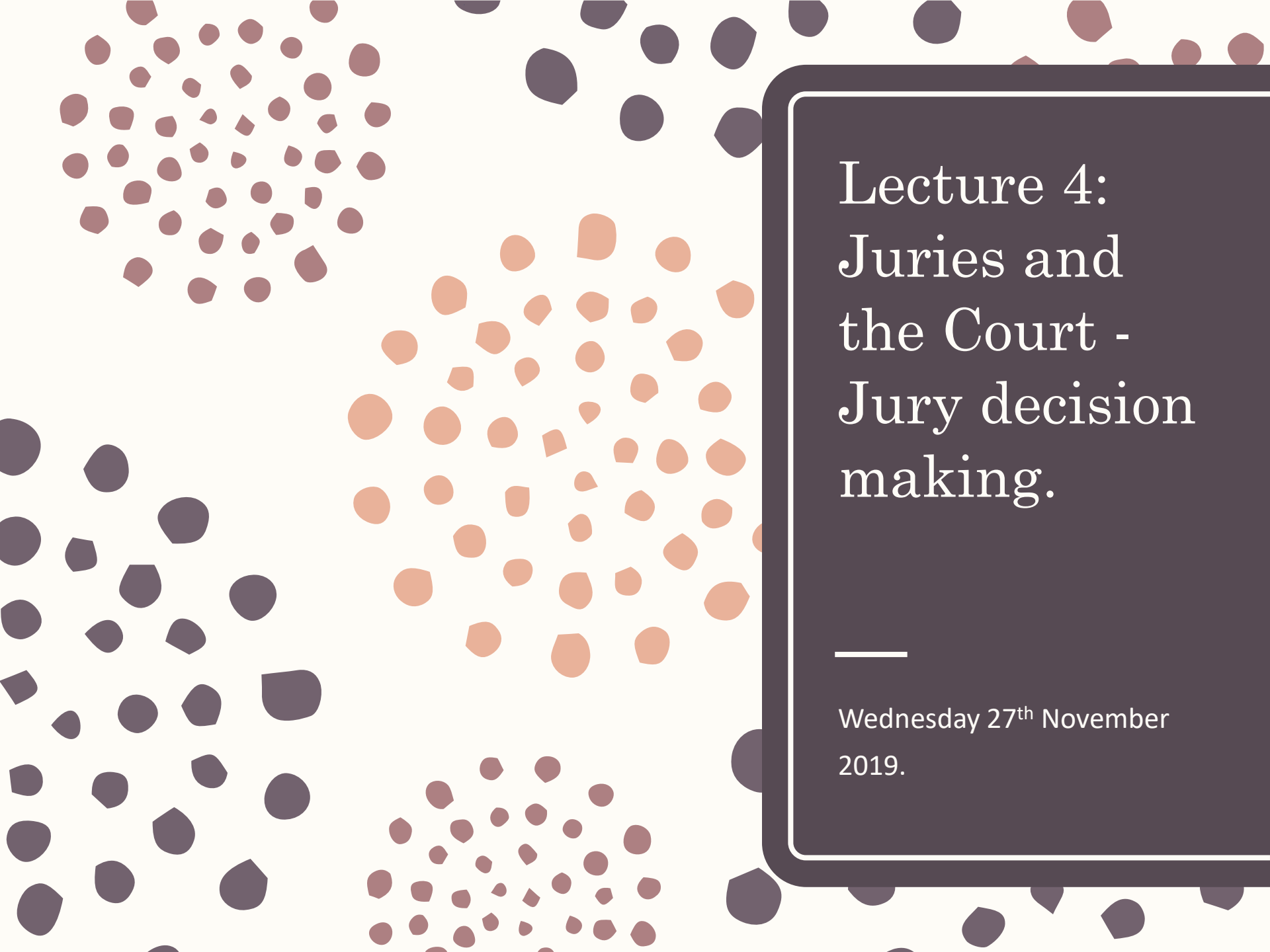




Lecture 4: Juries and the Court - Jury decision making.

Wednesday 27th November
2019.

Aims of the lecture:

- To consider factors which may affect jury decision making including:
- Social influence & conformity.
- Size of the jury & consensus required.
- Individual factors and characteristics of jurors, victims, experts, defendants and all!

Juries

- Juries have long been used to assist with the fair application of the law.
- The system is generally regarded as democratic, held in high regard and frequently used by many countries who view themselves as a democracy.
- Examples: England, Wales, Austria, New Zealand, Russia.
- Singapore, South Africa, India- no jury.
- France, Norway are more complex.

Juries – decision making

- Because of their importance in implementing justice, they are widely studied by social psychologists.
- Factors affecting the decisions they make and the processes by which they reach decisions are of paramount importance in operating a fair system of justice.
- What factors other than the evidence presented in court might influence them?



Researching juries

- The study of real jury deliberation is prohibited in the UK particularly.
- 2 methods of studying them are used:

Mock jury: A group of PP's asked to consider a scenario and offer a verdict.

Shadow jury: Selecting a group of pp's who would be eligible for jury service & asking them to sit in the public gallery to hear all evidence & deliberate.

Problems?

- Use of students...
- Unrealistic scenario? (No, it is not: Bornstein, 1999).
- Ecologically valid? (Yes... Avilia-Mora & Sperry, 2010).

Selecting jurors

- Those called for jury service are not automatically chosen to serve on the jury.
- Challenging & vetting of jurors is now commonplace in many countries including the USA.
- The degree to which prospective jurors are challenged in the UK is much less than in America.

Goleman (1994) once remarked that the difference between jury trials in England and America is that in England the trial begins when the jury is chosen, whilst in America it is over once the jury has been selected...

Selecting jurors

- Goleman's quote summarises the concern regarding the extent to which jury choice should be permitted.
- The famous Rodney King case sparked riots when four white L.A. P.O's were accused of beating the black motorist.
- The Rodney King beating
- Due to pre-trial publicity, the trial was moved from urban Los Angeles to Ventura county.
- The demographics of the jury pool here were greatly in favour of acquittal. One expert: "I think the case was lost when the change of venue was granted". A year later, in a civil court case, two black jurors were on the jury. This time two of the four police officers were convicted.

Size of the jury

- In Britain a jury is comprised of 12 people.
- In America jury sizes tend to vary more in number.
- 6 people juries can be used except in cases where the death penalty is a possible outcome.
- There are however many variations (See article by Hans, 2008).



Size of the jury

- ❖ Psychological research shows much difference in the way smaller and larger juries operate (Saks & Marti, 1997).
- ❖ Most research has found larger juries to be preferable because they tend to:
 - ❖ Be fairer
 - ❖ Spend more time in deliberation
 - ❖ Show more accurate recall
 - ❖ Produce more consistent verdicts
 - ❖ Have a greater chance of being representative
 - ❖ Are more likely to contain more than one person in the minority view (social support means less pressure to conform).
- ❖ However, according to Zeisel (1971) a larger jury is more likely to result in a hung jury.

More on the jury (Saks & Marti, 1997)

- The larger the jury the longer the deliberation.
- Guilty verdicts are **not** more common in larger juries.
- Hung juries focus less on the trial evidence.
- The type of jury is also important: a majority jury tends to begin with a vote to establish a baseline overview of attitudes, compared with a unanimous jury, which tends to be evidence focused from the outset. Both jury types approach the case from a different starting point.
- Six person juries are more likely to result in extreme verdicts compared to 12 (Horowitz & Bordens 2002).

Voir Dire & Scientific jury by selection

Not everyone invited to the jury will be selected. Careful choice of representative jurors will occur via the `voir dire` process. However, attempts have been made to scientifically select jurors as deemed best suited to the defence case.

Find sample of people similar as possible to those on jury. The jury are group of people invited to court and from whom the jury will be chosen. They may be a random group with a certain age range.

From this `mock` panel find out what types of people are likely to be sympathetic to the case.

At the voir dire, the lawyer tries to steer the selection of jurors by objecting to those with the characteristics less sympathetic to your side.

Inform the lawyer/barrister of the characteristics of individuals sympathetic to your side.



Scientific jury selection

- According to Lieberman & Sales, most lawyers place great importance on the voir dire. Trial consultants are sometimes used to select appropriate members based on scientific selection.
- One study (Schulman et al., 1973) explored several factors related to jury selection; trust in Government, ages and activities of jurors' children, political, religions and organisational affiliations and spare time activities.
- They concluded that the best jurors' were female, with no set religion, democratic, white collar or blue collar skilled, sympathetic to the defendants' cause and tolerant of Government policies.
- However, Saks (1987) argues that the use of scientific selection is problematic, because the defendant is least likely to afford this service, 'experts' are not really any better at choosing/judging jurors and in many instances, scientific selection is not permitted.

Some... factors influencing decision making processes

- Witness confidence
- Expert witness
- Order of presentation
- Characteristics of Defendant
- Ethnicity/Race
- Juror characteristics- attitudes, knowledge etc.
- Social pressure/Group think
- Role of the Foreperson
- [A fair Juror?](#)



Juror characteristics- commonly held beliefs. True or not? Fulero & Penrod, 1990)

- **Previous jury experience:** is more likely to result in a conviction.
- **Young jurors** are less likely to convict.
- **Females** more likely to convict rapists, and
- **Women** are unpredictable or will be influenced by their husbands.
- **Women** are least sympathetic and should be avoided.
- **Women's libbers`** are antagonistic to male defendants.
- **Authoritarian personalities** are more likely to convict than non authoritarian personalities.

However:

- Most Jurors have decided on their verdict before deliberation.
- The pre-deliberation of individual jurors verdict preferences are the best indicator of the final jury verdict.
- What does this imply?



Pre-trial publicity and juror attitudes

- Schemas may affect subsequent perception of defendant.
- Steblay et al., (1999). Meta analysis of 44 studies.
- E.g. OJ Simpson → perceived as a 'good guy' (high profile personality).
- Prospective jurors had to respond to a 61 page questionnaire with 294 questions. (JBS).
- More commonly: the PJAQ (Lecci and Myers, 2008).
- These presume that jurors give honest answers...

Pre trial publicity...

- Studebaker et al., (2000) investigated a `hearing` associated with the Oklahoma City bombing.
- Firstly they performed content analyses of various local newspaper, followed by questionnaires administered to the general population of the surrounding areas. They reported a correlation between the attitudes of the general public and the version of the City bombings contained within the publication of their choice.

But...

- Seltzer et al., (1991) surveyed real jurors and found that 25-30% admitted concealing information about themselves.
- Are they then representative of their community?
- Each case is unique regarding the defendant, victim, barristers and their skills, strength and type of evidence, the composition of the Jury!
- Also- key to these variables, is the way in which the arguments are framed.

Juror attitudes

- Beliefs that jurors hold before a trial can and do influence their decision.
- Therefore we need jurors with similar characteristics and backgrounds as the defendant.
- Will they be less sympathetic if not?
- Gender also plays a role.
- Jurors who do not agree with the death penalty are discharged from trials in America.

***Barristers should check jurors
for signs of prejudiced
attitudes- possible or not?***



Previous convictions

- ❖ These are not allowed to be taken into account in a trial in the UK.



Stages in the jury process

From CA of videotapes of mock jury deliberations, conclusions were reached about the Stages in Jury Decision making (Hastie et al., 1983).

- **Orientation period**
 - Relaxed and open discussion, setting the agenda, raising questions, explore facts, differing opinions arise.
- **Open Confrontation**
 - Fierce debate, with focus on detail, exploring different interpretations and pressure on the minority to conform.
- **Reconciliation**
 - Attempts to smooth over conflicts with tensions released through humour
- **The jury will be either evidence or verdict focused and this depends on the type of jury situation you have.**

Order of presentation

- Pennington and Hastie also found that from interviews with 26 pp's, that individual jurors told very different 'stories' of the evidence.
- How jurors make sense of the information given to them influences their decision:
- Their '**story telling model**' shows that jurors construct plausible stories of what happened, and use their preferred story to interpret the evidence in light of this.
- Information presented logically and in order is most influential.
- Devine & Ostrom (1985) unorganised stories have the least impact on jurors.
- Pennington & Hastie (1998) varied the order of presentation of events: The easier to follow stories dominated the decision process.
- They also found that more decisions were made in favour of evidence organised by story rather than by legal issues.

Therefore- Judicial instructions

- The Judges` instructions (Jury Charge) have to be clear and with the emphasis on `Law` in mind.
- Do Jurors understand the Judges` instructions?
- Ogloff and Rose (2005) propose that they think they do, but the reality is that they probably don`t!
- Daftary-Kapur, Dumas and Penrod (2010) suggest that jurors should be able to make notes and be provided with clear written instructions and also that inadmissible evidence is difficult to ignore- therefore they should be provided with decision trees to for-see the consequences of certain decisions.

Eye Witness confidence

- Wells et al., (1979) witness confidence accounted for half of the juror belief in the witness itself.
- Penrod & Cutler (1987) jurors are most strongly influenced by more confident witnesses.
- Cutler et al., (1989) manipulated 10 witness factors; witness confidence was the most significant factor in influencing juries.
- Deffenbach (1986) meta analysis of 35 tests of EWT confidence and found their accuracy to be significant at 0.25. Whilst low, this is significant. But, does confidence imply accuracy?
- Shaw (1996) repeated questioning leadings to more confident testimonies!!!
- Ethnicity and age also influence jurors confidence in the EWT.

Expert Witness

- Klaus & Sale (2001) investigated 208 mock jurors-
more influenced by clinical experts or witness experts
based on research.
- Clinical expert testimonies were the most influential.
- But... students as their pp`s
 - representative or not?



Attribution theories

- People do not always make sound decisions based on the facts but are influenced by cognitive biases, which are not totally logical...
- A large body of cognitive psychology focuses on attributions- the judgements we make about the causes of a particular behaviour.
- Distorted patterns of attribution (or biases) may have serious consequences for jurors making decisions about a suspect's responsibility and their guilt or innocence.

Internal & external attributions

Heider (1958)

- Distinguishes between Internal & External attributions.
- Attributing behaviour to the sort of person we think they are

- “Internal attribution”

Or the result of circumstances

- “External attribution”

Fundamental attribution error (FAE)

- As a general rule when interpreting the behaviour of others we overestimate the role of dispositional factors.
- And underestimate the role of situational factors.

Attributional bias

Walster, 1966:

- Attributions made by observers can change based on the consequences of the action.
- Procedure: Pp`s presented with a story of a car rolling down a hill.
- Story had a variety of different endings with varying severity of consequences.
- Pp`s asked to explain why car was rolling down hill.

Attributional bias

- Results:
- Condition which showed little injury or damage as a consequence – pp`s tended to attribute situational factors e.g. mechanical failure
- In the condition with severe consequences – pp`s tended to blame driver & attribute dispositional factors e.g. not applying handbrake properly.

Conclusions:

- Witnesses interpretation & subsequent recall of events are subject to social information processing biases (attribution errors).

Attribution theories

Just world hypothesis – Lerner 1980

- People have a need to believe in a world that is just and fair and that people ‘get what they deserve’.
- In general this works in favour of the effectiveness of the jury system.
- However it could also introduce a bias whereby victims may be blamed for their own misfortune.
- This is in order to uphold the belief that they too ‘get what they deserve’.
- Example overleaf...

Attribution theories

Just world hypothesis – Lerner 1980

- One of the most disturbing aspects of this is the attitude sometimes expressed towards rape victims e.g. ‘she led him on’. ‘what does she expect dressed like that etc.

Study: Bell et al., (1994).

- Using a mock jury method, they asked pp`s to consider 4 different rape cases (2 involved strangers, 2 involved date rape).
- Findings: Pp`s placed more responsibility for what happened when the victim knew her assailant than when he was a stranger.
- Conclusions: Juries may have preconceived ideas on the guilt or innocence of a suspect based on their perceptions of the victims responsibility, which may stem from a cognitive bias.

Overview:

Interpersonal influences on jury decisions

- Hastie and Pennington (1983) also report on various **social influences on jury decision making**:
- Leadership
- Majority influence
- Minority influence

Interpersonal influences: Leadership

- Before any deliberations take place the jury selects a foreman who is responsible for calling for votes, liaising between the judge and jurors and announcing the verdict to the court. Strodbeck & Hook (1961) found that several factors influence who becomes the foreman:
 - People who have previously served on a jury.
 - Those of a high social economic status.
 - Those who spoke first.
 - Those who sit at the head of the table.

Gender & SES

- Kerr et al., (1982) in a series of 179 real life trials, women were elected as foreman in only 10% of cases (despite males and females being equal in number overall).
- Males speak more than females and higher SES jurors participate at a higher rate than lower SES jurors.



Location at table

- People who sit at the head of a rectangular table are more likely to be chosen as foreman than those sitting at the sides (Strodtbeck et al.,).
- Jurors seated at ends and middle of rectangular table also participate at higher rates than jurors in other positions.



Interpersonal influences: Leadership

- Ainsworth & Pease (1987) summarise...
‘... the person most likely to be chosen as foreman is an upper class male who sits at the head of the table and opens the discussion. These findings are important as the person elected foreman may have more influence than any other juror’.

Interpersonal influences:

Leadership of discussion:

- Content analysis of videotapes of mock juries (in Hastie & Pennington study) showed that on average:
- 3 out of the 12 jurors produced more than half of all the spoken utterances in deliberation;
- More than 20% of mock jurors were entirely silent.

Interpersonal influences:

Majority influence

- A **post deliberation survey** (not allowed in UK) of jurors in 225 real criminal cases showed that in roughly 9/10 cases decided in the direction of the initial majority.

Hastie et al., (1983) again...

- Original majority not guilty, then final verdict not guilty 86% of time.
- Original majority guilty, then final verdict guilty 90% of time.

Majority influence

- Majority influence can work through groups processes:
- Risky shift **or...**
- Group Polarisation
- Conformity **or...**
- Group Think
- Hindsight bias



Risky Shift **OR** Group polarisation?

- Stoner (1961) decisions are more daring when made as a group.
- The tendency for groups to move towards even stronger positions/ opinions when the majority favour one side.
- However, much more complex.
- Discussion increases strength of feeling in the original direction (Myers & Kaeplin 1976): group polarisation.

Conformity

- Many people hold the view that if most people think something is correct then it probably is...
- (ask the audience lifeline!!)
- Recall Asch's 1955 research, which showed that majority influence can lead people to deny the evidence of their own eyes on a simple task through conformity.

Conformity: recap key terms

Conformity:

- Behaving in a way that fits in with a particular group

Group norms:

- A group's expectations about what behaviour is appropriate
- These businessmen are conforming to group norms about appropriate dress
- And so are these punks

Group pressure:

- How a group influences its members to adhere to group norms



Factors affecting conformity- relate to the court scenario

- Group size- *what do we know?*
- Group cohesion
- Defectors/dissenters
- Task importance- *severity of the crime/strength of the evidence*
- Diversity of backgrounds
- Experts versus novices
- Cultural influences- *race, ethnocentrism*

Conformity & juries

- Juries operate quite differently than in Asch's study. They deliberate and discuss the evidence.
- Smith & Mackie 1995 suggest that in juries majorities exert their influence through a number of factors -

Smith & Mackie (1995)

- The majority view is more likely than the minority one to be accepted because:
 - 1. this view is expressed more often in a variety of ways and arguments.
 - 2. this view is discussed more and in greater depth.
 - 3. this view seems more compelling and is expressed more persuasively than the opinions of the minority.

Group think & Hindsight bias



Interpersonal influences: minority influence

12 angry men 9.30 minutes

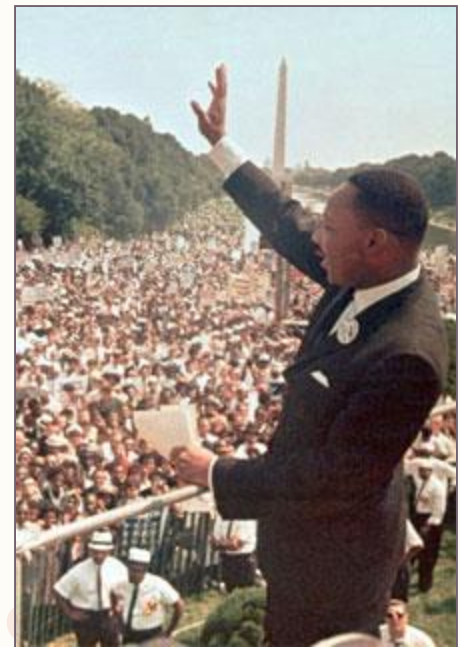
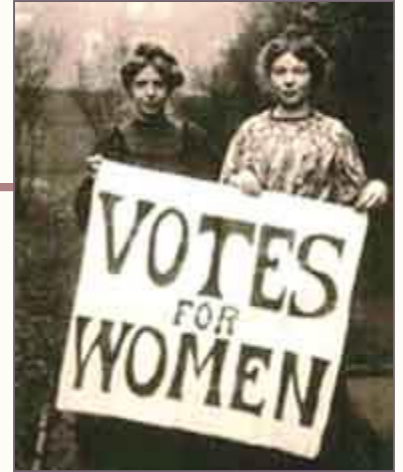
Minority influence :

There are also cases when a minority can influence the behaviour of a group. E.g. Moscovici study.



Minority influence

- **Moscovici** argued that American research on conformity ignored the influence that minorities can have on society's attitudes.
- Studies such as Asch's reflect compliance.
- Minorities can effect real change: E.g. suffragettes changed attitudes to women's rights.
- Campaigners like Martin Luther King changed attitudes to racial discrimination.
- How does this apply to the judicial system?



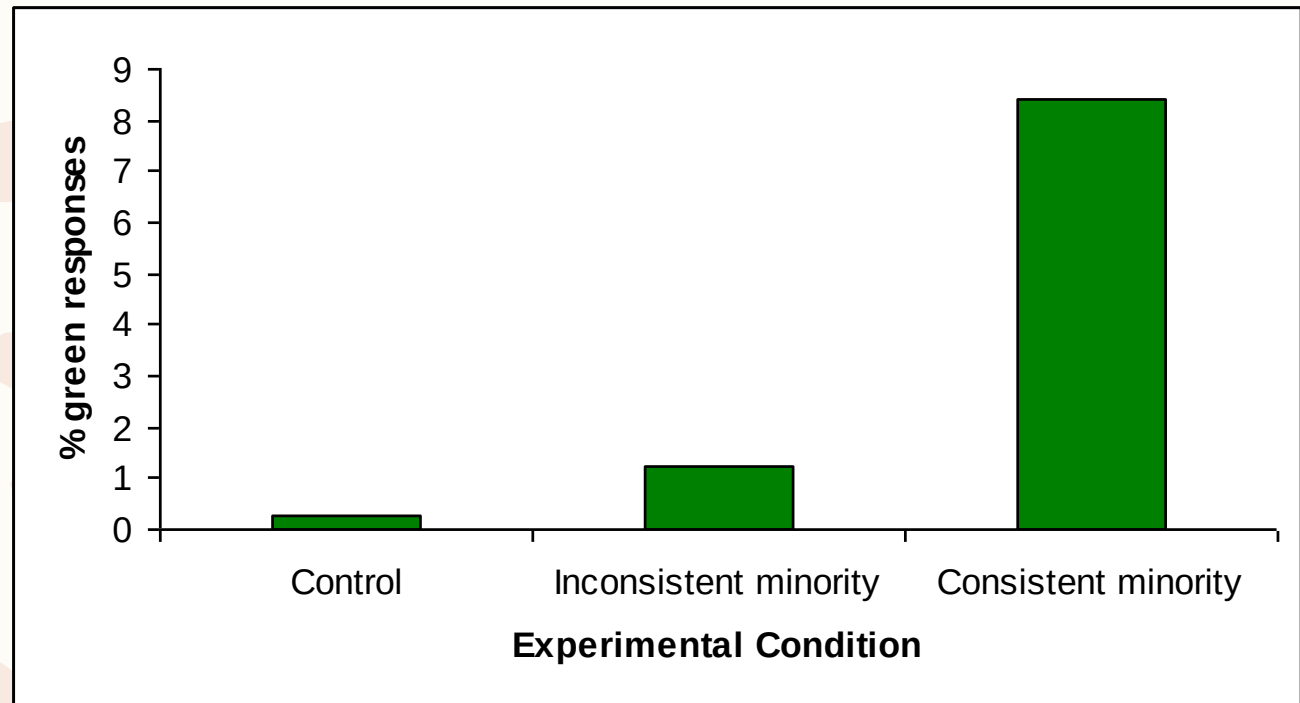
Moscovici's research

The influence of a minority depends on behavioural style of individuals involved. The minority which is:

- **Consistent** – most crucial. A consistent minority can make people rethink their views. An inconsistent minority has almost no influence
- **Flexible**
- **Has relevant arguments**
 - Will have most impact on the majority.

Moscovici's research (1969)

Results:



- 8 times as many participants responded “green” in the “Consistent minority” condition as in the “Inconsistent minority” condition

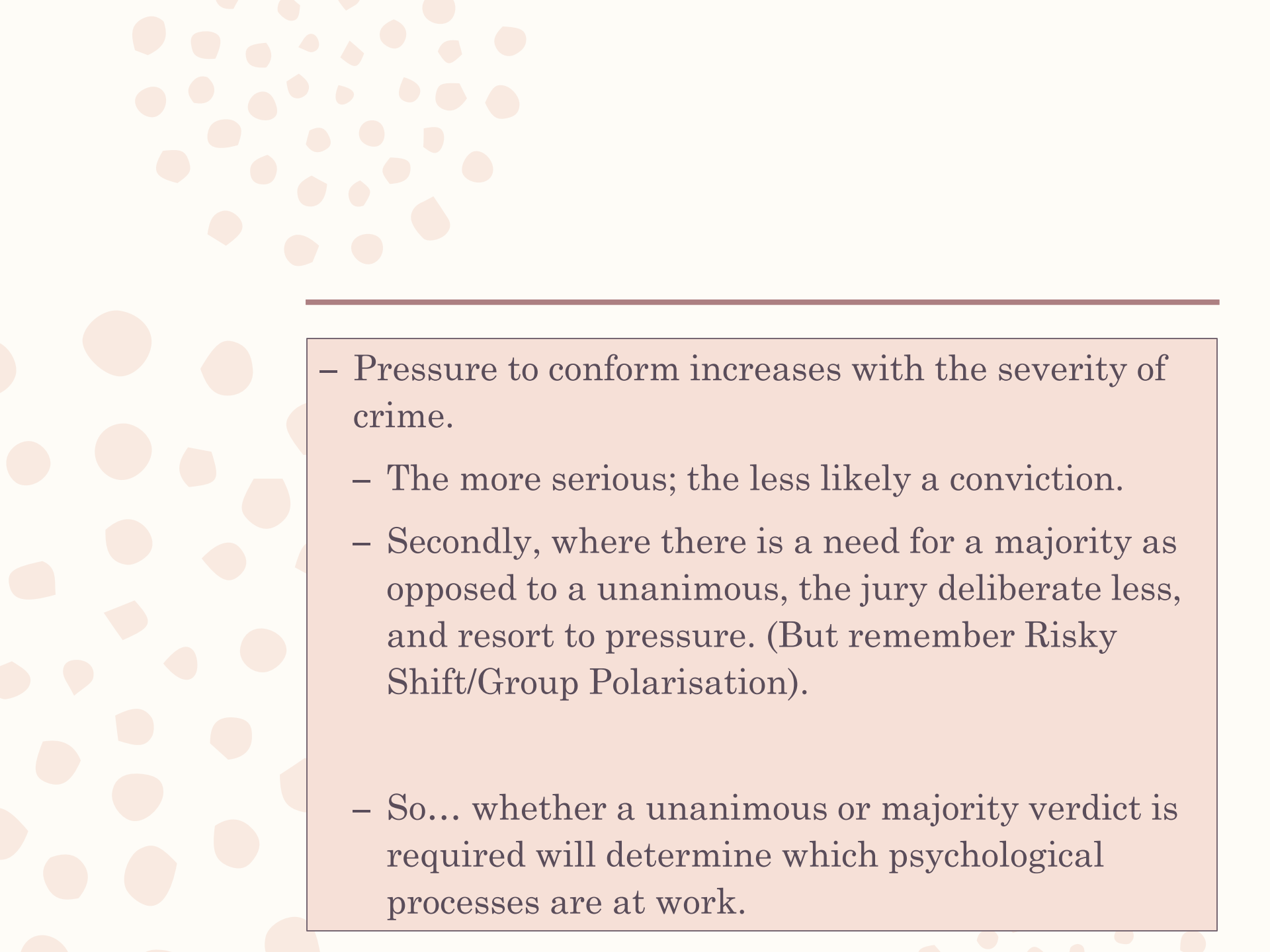
Moscovici's research (1969)

Conclusions:

The minority which is consistent will have most impact on the majority.

– 15-17 and 30-34 minutes



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- Pressure to conform increases with the severity of crime.
 - The more serious; the less likely a conviction.
 - Secondly, where there is a need for a majority as opposed to a unanimous, the jury deliberate less, and resort to pressure. (But remember Risky Shift/Group Polarisation).
 - So... whether a unanimous or majority verdict is required will determine which psychological processes are at work.



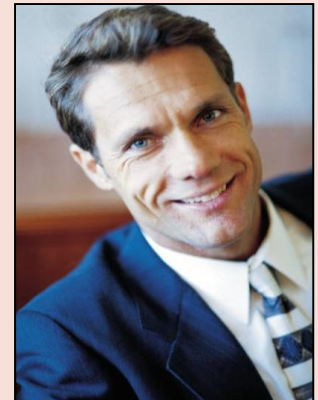
- Nemeth (1977) found that jurors are more likely to agree on a not guilty majority, than on a guilty majority.
- Baldwin (1980) argues that the chances of acquittal doubles if deliberation is longer than three hours.
- Kalven & Zeisel (1966) found that out of 250 juries, where the initial majority was consistent, the final outcome was the same as the initial verdict.
- What does this suggest?

Role of the Foreperson

- Another contributory factor is the **role of the foreperson**: whilst 50% of jurors are women, 90% of spokespersons are male. Why?
- Reasons proposed for this are men tend to speak first, they tend to occupy the seat at the head of table, and they often appear confident and take charge.
- This is in contrast to other individuals, who are less likely to contribute and prefer to sit back and listen; a term referred to as **social loafing**.

Juror characteristics - Foreperson influencing others

- Very influential.
- Mostly white and of a high socio-economic status.
- Usually the first to conduct conversation.
- However...
- McCabe and Purves (1974) found that the forepersons did not influence the jury deliberation but subsequent research had questioned this...
- Weak forepersons lead to more hung juries (Tinsley 2001).
- Rules for forepersons? (Ogloff et al. 2007).
- **Is this still relevant today?**



Evaluation

Are juries really effective?

- **Kalven and Zeisel (1966)** found that jurors have usually decided on their verdict before they retire to the jury room.
- They use jury deliberation time to try and persuade others of their opinion.
- 40-44, 52-60, 1.12-1.15, 1.20.

Recall: Unanimous or majority verdict?

- Researchers have also explored whether a unanimous or majority verdict is likely to make any difference to proceedings.
- In Britain a majority of 10 to 12 is enough to secure a conviction
- In America few states allow a less than unanimous verdict for criminal trials.
- What are the implications for the interaction of the jury?

Unanimous or majority verdict?

Nemeth (1977):

Studied mock juries.

Some required to reach a unanimous decision.

Others allowed to reach a decision with a 2/3 majority.

Findings:

Those required to reach a unanimous decision debated for longer, were more likely to account of minority views and were more confident in their decision. They were also more likely to change from their original verdict.

So... what does this mean in psychological terms?

Unanimous or majority verdict?

Hastie & Pennington (1983).

The mean total deliberation time for the 12/12 juries was 138 minutes (two hours, 18 minutes).

- **The mean total deliberation time for the 8/12 juries was 75 minutes** (one hour, 15 minutes). They spent less time debating once the required majority had been reached.
- But they were less confident & less satisfied with verdict reached.

Effectiveness of juries

- Social psychologists generally agree that a majority verdict reduces the effectiveness of juries.

Brehm & Kassim (1996)

- ‘it is clear that this procedure (majority verdict rather than unanimous) weakens the minority, breeds close mindedness, inhibits discussion and leaves many jurors uncertain about decisions.’

Characteristics of the defendant and interactions with the victim



Attractiveness



- More attractive defendants will receive less harsh sentences (**DeSantis and Kayson, 1997**)
- However, if attractiveness is part of the crime, more attractive defendants will receive harsher sentences (**Sigall and Ostrove, 1975**).
 - Pp's shown either an attractive or unattractive photo of a burglar.
 - Jurors recommended a sentence that was half of the length of the sentence for the unattractive photo.

Physical attractiveness of Defendant

- Baron & Byrne (1997) Attractive defendants receive a lighter sentence: `beautiful is good?`
- Jurors assume that attractive people are good and unattractive people are bad, due to the stereotypes held about criminals.
- Michelini & Snodgrass (1980) found that physically attractive people are more likely to be acquitted.
- Stewart (1980) observed American judges, and found that the attractive defendants had lighter sentences than those who were less attractive.
- Downs & Lyons (1991) found similar effect when setting bail: The less attractive individuals had higher bail terms set.

Identification

- Jurors will be more sympathetic towards people with whom they can identify.
- E.g. ethnic background.
- People do take ethnicity into consideration when returning a guilty verdict.
- Some crimes are associated with different races. Examples of this?...



Ethnicity/Race

- Black defendants more likely to be convicted as guilty, even by black juries (Baldwin 1979).
- Pfeiffer (1991) reported that white university students were more likely to rate black defendants as guilty than white.
- Gordon (1988) found black burglars had longer sentences than white burglars.
- White students were more likely to find black defendants guilty if the victim is white (Taylor 1985).
- if a white person is murdered, jurors will be more likely to recommend death penalty than if a black person is murdered.
- **Implications here...**

Duncan (1976)

- Participants view a video of a disagreement between 2 people, one of which was pushed.
- Tape 1 → white assailant/white victim.
- Tape 2 → white assailant/black victim.
- Tape 3 → black assailant/white victim.
- Tape 4 → black assailant/black victim.

Findings

- When asked whether they were “playing around” or “violent behaviour”,
- 70% of people described behaviour as violent when assailant was black .
- 13% only when the assailant was white.
- Tape 3 = highest violence.
- Tape 1= lowest.

Age

- The age of the defendant can affect jury decision making, based on the crime.
- E.g. a teenager vs. a pensioner in an act of vandalism.



Early jury work:

`It is argued that much jury simulation research, especially that involving investigation of the effects of defendant character on juror-jury decisions, can be fairly described as marked by (a) legal naivete, (b) sloppy-scholarship, and (c) overgeneralisation combined with inappropriate value judgements.` (Vidmar, 1979, p. 96).

However, after a review, Bornstein (1999) concluded that unrealistic methodology was not of concern and that second generation research is more ecologically valid. More recent focus is on evidence appraisal (e.g. DNA evidence etc.). Answers are still yet to be revealed...

In conclusion-

- Juries are complex and difficult to study.
- Ignores many factors such as victim, Judge and Lawyer characteristics.
- Difficulties with studying accurately.
- Many jurors do not know what to expect or do (Thomas, 2010).