# **The Justice Syndicate: how interactive theatre provides a window into jury decision making and the public understanding of law**

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**Abstract**

*The Justice Syndicate* (TJS) is an interactive performance, featuring an audience who become jurors considering a difficult case. Via iPads, participants receive evidence, witness testimonies and prompts to vote and discuss the case. We compare TJS to other theatre performances in which audiences are juries, arguing it is unique in only having twelve audience members, with no additional spectators. We compare TJS to experiments researching jury decision-making. In its novel use of technology, it offers a scalable method to research group decision-making in jury-style settings, or to give legal practitioners and prospective jurors an experience of the psychological factors affecting jury deliberation. We discuss how different juries can be presented with identical evidence and come to opposing verdicts. We argue that these wildly different outcomes are linked to how the participants – individually and as a group – resolve the tension between what is legal and what is just.

**Keywords**

*The Justice Syndicate;* art, theatre, interactive theatre, immersive theatre, participation, performance, law, jury trial

**Word Count:** 11,872

**Introduction**

*The Justice Syndicate* (TJS) is an interactive theatre experience in which twelve audience members take on the role of jurors considering a difficult case. Each juror has a tablet on which they receive ‘evidence’ in the form of video testimonies, various documents, legal definitions, and prompts to interact with each other and discuss the case. At various stages, they are also asked to vote whether they think the accused is guilty or not guilty, culminating in a final decision for the group. The piece has to date been performed eighty times at theatre venues and festivals; at documentary film festivals and science festivals; in museums, cultural venues, universities, courthouses and even in a large business organisation.

Part participatory theatre, part experiment in group reasoning and decision making, *The Justice Syndicate* also fits into a long history of cultural practices connecting theatre and law.[[1]](#footnote-1) In this article, we discuss how TJS belongs to and extends the tradition of theatrical performances of jury trials. We adopted the jury trial format because it is one of the few real-life situations in which strangers come together to make an important decision as a group. Although TJS was not originally conceived as a ‘mock jury’ or jury simulation study, we will also compare it to such studies. In its novel use of technology TJS offers new ways to test certain aspects of jury decision making at scale. It also offers the opportunity to provide experience-based jury service training to prospective jurors and legal professionals. The discussions we have observed also provide insights into how participants trade-off the tension between what is ‘just’ and what is ‘legal’. With the verdicts ranging from unanimously guilty to unanimously not guilty (despite the fact that every group of jurors sees the same evidence) the piece also raises questions about the appropriateness of the jury system for those cases where ‘hard’ evidence is absent.

**Development and Structure of *The Justice Syndicate***

***Origins and Development***

TJS was created by artists and experience design company Fast Familiar (formerly known as fanSHEN), computational artist Joe McAlister and neuroscientist Kris De Meyer. The piece was conceived between April and July of 2016, against the backdrop of the rising polarisation in UK society triggered by the EU referendum. Given this context, we wanted to create an interactive experience in which a group of strangers can come together in person (rather than interact on social media) and hold discussions that touch on what they care about and value in life. We settled on a jury format because it provides a recognisable and therefore ‘believable’ setting for a group of strangers to come together to make an important decision. The interactive performance side of TJS and the structure of the piece are discussed elsewhere.[[2]](#footnote-2) We anticipated that – given the right ‘procedural design’ and levels of interactivity – it would lead to high degrees of ‘absorption’ and participation in the piece. This would make the decision that participants are asked to make feel real, and the group discussions feel important and meaningful. We also wanted to incorporate several tests and triggers of decision-making factors known from the fields of neuroscience and psychology. We anticipated that the piece would offer an ability to re-test – in settings that feel close to real-life – some of the long-standing principles in the study of individual and group decision making. We also aimed to provide participants with a first-hand experience of how these psychological factors play a role in the dynamics of the group discussions and the evaluation of evidence. In a similar vein to the iconic, naturalistic social psychology experiments from the 1950s and 1960s[[3]](#footnote-3) we developed a ‘debrief’ session to follow the immersive experience. Its aim is to help participants step out of the specifics of the court case to start making sense of what just happened during the deliberation process, and to reflect on what that means for the acrimonious disagreements that are rife in society. This includes disagreements about how the legal system does or does not serve justice to specific groups in society, triggered by questions that the content of the case itself (sexual assault) throws up.

***Story and Structure***

A TJS performance is experienced by twelve people in a closed room, without additional spectators. Two or three TJS team members sit at the tech desk but are not permitted to intervene in the discussions. When audience members assemble they are welcomed by one of the members of the team. They are informed that, when entering the room, they may sit down in any seat around the table, that there will be an iPad in front of them, and that the iPad will tell them everything they need to know. If they have any technical problems with their iPad, they should raise their hand and a technician will help them – but apart from that, none of the team members present in the room are allowed nor qualified to advise them on any points of law: the decision is theirs and theirs alone. They enter the room and sit down. In the room there is a table with 12 chairs. Each place has a placard with a juror number (Juror 1, 2, 3 etc), an iPad, a reporter’s notepad and pen, and a glass of water (see **Figure 1**).

[INSERT FIGURE 1 AROUND HERE]

Once everyone has taken a seat, an on-screen tutorial explains how to use the iPads. The piece itself begins with a ‘BBC London’ radio news report outlining the key elements of the case: ‘renowned childhood cancer surgeon’ Dr Simon Huxtable has been accused of sexual assault by Sally Hodges, a ‘single mother of two’ from Kingston-upon-Thames. As a first signpost for the interactive nature of TJS, the news report is read out by two randomly selected jurors – prompted by instructions on the iPads to read the parts of a radio presenter and a legal correspondent, respectively. The news report also gives a ‘plausible’ storyline for the format: jurors hear this is the first time a ‘new form of jury discussion’ is being trialled in criminal court, in which they will get to review key pieces of evidence and watch witness testimonies and expert statements on ‘specially programmed devices’.

[INSERT FIGURE 2 AROUND HERE]

Following the scene setting, jurors are presented with a sequence of pieces of evidence in document, audio or video format: the questionable browsing history of Simon Huxtable showing a penchant for sexual fantasies of patient-doctor rape; GPS data showing how long he was at Sally Hodges’s house; witness statements and character testimonials (audio and video clips played by actors) from former patients, Simon’s wife, Sally’s sister, one of Sally’s childhood friends, and Sally herself; video interviews with real-life experts about the relationship between sexual fantasies and behaviour as well as about the nature and prevalence of accusations of sexual assault; and, finally, a video statement by the accused himself. The balance of the evidence and testimonies is such that some facts point towards, and others point away from the guilt of the accused.[[4]](#footnote-4) There are, however, no ‘smoking guns’ that make either guilt or innocence a certainty.[[5]](#footnote-5) Another document shown on the iPads is a glossary with definitions of several legal terms (e.g. ‘sexual assault’, ‘majority verdict’, and ‘reasonable doubt’). These terms play a crucial role in the group discussions, as we will discuss later.

The content and the order of presentation of the evidence is the same across each performance. Interspersed with the evidence are activities to maintain the interactivity (e.g. occasionally asking participants to read out some text), and ‘taking the temperature’ votes. These are blind votes taken on the tablets and recorded in the system, asking jurors to indicate whether – up to that point – they are leaning ‘guilty’ or ‘not guilty’. As the piece progresses, there is more time for group discussion. The first of these discussion sessions are a few minutes long, lasting up to 7 minutes at the end of the piece. The nature of the group discussions and the trajectory of the votes for each group are what makes every performance unique. They are driven by the different dispositions, lived experiences and knowledge of the jury and the dynamics of their interactions. Together, these responses make up a rich tapestry of insight into how groups make decisions in jury-like settings. It also reveals how participants think about the legal system and how well it serves their ideas of justice.

We will delve into these findings in later sections, but first we need to explain how a TJS session ends. When all the evidence has been presented, two audience members (selected at random) read the closing statement for the Defence and the closing statement for the Prosecution. This is followed by a first ‘final’ discussion of 7 minutes and a first ‘final’ vote. If the outcome of this vote is unanimous, the piece ends here. If it is not unanimous, audience members are given a further 3 minutes of discussion, followed by another vote. With this vote they have to reach a 10/2 majority. If they do not, there is another 3-minute discussion and one last vote. If this last vote does not reach a 10/2 majority for guilty, a not-guilty verdict is delivered, and the session ends. We adopted this structure to strike a balance between the ability to cap the length of the piece (important when it takes place in a theatre or at a festival) and the flexibility to allow different groups to navigate their disagreements or consensus-building in their own way. Jurors are *not* told beforehand that the piece certainly ends after the third of these ‘final’ votes. In those groups that still have disagreements at this stage, the jeopardy of ‘Will they let us out?’ and the pressure for group consensus increases with each of the votes.[[6]](#footnote-6) We will return to how that impacts the final verdict in a later section.

[INSERT FIGURE 3 AROUND HERE]

***Structure and Purpose of the Debrief Session***

Once a final verdict is reached (‘guilty’ or ‘not guilty’), it is displayed on the iPads. Each of the jurors is then handed an A3 newspaper (*Tomorrow’s News* – see **Figure 3**), the front page of which reports their verdict (there are separate guilty and not-guilty versions). The back contains a summary of the results of past performances, as well as an overview of some of the psychological principles at work. This marks the start of the debrief session. The debrief discussions are normally facilitated by the authors of this article. During the debrief audience members are invited, through a series of questions, to reflect on their decision-making process, as individuals and as a group. How early did you reach your own verdict? Did you change your opinion? Did you feel under pressure to conform to the majority opinion? Are you aware of any influences apart from the facts themselves that influenced your verdict? These questions are the way into introducing jurors to some of the key psychological principles that play out during the piece, as well as data about the voting behaviour of previous audiences that, taken together, are evidence for these psychological factors. They are then invited to ask any questions they have about the piece, at which point audience members often share their reflections about justice and the law.

***Evidence of high levels of participant engagement and immersion into the piece***

TJS was conceived as a piece of playable theatre and therefore special attention went into the design to ensure an engaging experience for the participants. We have discussed participants’ engagement and immersion into the piece in detail elsewhere[[7]](#footnote-7) but here we briefly want to repeat some of the evidence about the participants’ levels of engagement, as well as their sense that the experience feels real and the decisions they are asked to make feel meaningful. These are important prerequisites not only to see if TJS succeeds as a piece of interactive theatre, but also affect how valid the decision and discussion data observed during the performances are as a proxy for people’s interactions in real jury deliberation rooms.

Audience members often commented on how engaged and immersed they were. One reviewer called TJS a ‘highly enthralling and engaging experience’.[[8]](#footnote-8) Another wrote:

[A]s time goes on, each of us begin really to invest in elaborating our own points, speaking with confidence and assurance. […] For 90 minutes, I am totally immersed in this trial. At some point, my cheeks flush, my heart starts pounding and I have to remind myself that it is just a performance.[[9]](#footnote-9)

This comment, and many similar ones we have heard, indicate that to take part in TJS ‘feels real’ for many participants. But how close is the experience to real jury deliberation? Several participants have shared during or at the end of a performance that they have served on a real jury, often in cases of a similar nature (i.e. sexual assault). Without exception, these real-world jurors have stated that TJS feels very close to what they experienced in their jury deliberations, from the conflicting evidence presented during the trial all the way to the sparks that fly during the group discussions. Barristers and other legal practitioners who have taken part in performances have also commended the real-world fidelity of the mixture of evidence presented in TJS. What this audience feedback means for the validity of TJS as a research or learning tool will be discussed further in the section on mock jury research below.

***Venues and Audiences***

The eighty performances we have held to date have taken place in a variety of cultural and public settings and locations around England, Scotland and Ireland, yet we make no claims as to how representative these participants are of the population of each country or location. On the contrary, we are aware of the self-selection and the influence of cultural values on who chooses to participate and why. However, even with groups of jurors in identical settings, on the same day, and pooled from the same demographics, we have observed radically different group discussions and verdict outcomes. Given that, we expect that with more diverse or representative jury groups the findings we discuss later would continue to hold.

Entry to TJS is usually ticketed (by the organising venue or festival) and, most of the time, participants pay to participate. On a small number of occasions, admission was free at point of entry because the organiser paid the fee, or the price of the ticket was included in a festival pass. Even in those situations, people often have to show commitment to be able to participate (e.g. queue to obtain a ticket). We did not observe any systematic differences in levels of participation and diversity of outcomes between performances that were paid or free at point of entry. The ticketed nature of TJS is in contrast to traditional mock jury research (as discussed below), where participants are usually paid a fee to participate. We will return later to the comparison with mock jury research but first we will discuss it as an interactive experience located in theatrical tradition.

**Theatre and the Law**

TJS is part of a long history of narrative and theatrical representations of the law, dating back at least as far as Aristophanes. The theatricality of the law and the prevalence of the representation of the law within theatrical drama has been widely discussed. As Alan Read notes, ‘the relations between theatre and law were always omnipresent’.[[10]](#footnote-10) A courtroom provides many of the key ingredients of drama: high stakes, conflict, people of differing status and (usually) a beginning, middle and end. TJS is an evolution of that tradition – focussing, specifically, on the jury deliberation phase of a trial.

Probably the most iconic of jury trial representations is Reginald Rose’s teleplay *Twelve Angry Men.[[11]](#footnote-11)* Originally written for a live television production in 1954, it was adapted in 1955 for the stage and in 1957 for film (staring Henry Fonda). The piece was based on Rose’s own experience of serving on the jury in a manslaughter case. In a commentary, Rose wrote: ‘It occurred to me during the trial that no one anywhere ever knows what goes on inside a jury room but the jurors, and I thought that a play taking place entirely within a jury room might be an exciting and possibly moving experience for an audience.’[[12]](#footnote-12) In its setting (a jury deliberation room – away from the courtroom) it shares many dramatic components with TJS, from the gradual revealing of the evidence to the heated arguments and the entrenchment or (conversely) changing of opinions. There are two main elements of difference: first, *Twelve Angry Men* is a piece to be observed, rather than participated in; second, it contains a ‘ground truth’ hidden inside the evidence which, through tenacity and virtuous reasoning, is eventually uncovered by the group. *Twelve Angry Men* was arguably the piece that sparked the appearance of the modern courtroom drama. Here, we will focus on some recent renditions that invite audience participation.

***Theatrical representations of jury trials with audience participation***

TJS, like much of Fast Familiar’s work, is part of a wave of interactive or immersive theatre that has been growing in popularity in recent years. As Josephine Machon notes, ‘in theatre discourse “immersive” is now attached to diverse events that…seek to exploit all that is experiential in performance, placing the audience at the heart of the work.’[[13]](#footnote-13) We have discussed elsewhere[[14]](#footnote-14) how TJS is a unique development of immersive theatre as an art form in the way that it uses technology to place the audience right at the heart of the work.

[INSERT FIGURE 4 AROUND HERE]

This active nature of being an audience member is emphasized in publicity materials for TJS (see Figure 4). However, it is certainly not the first theatrical performance to task its audience with deciding on a verdict. Ferdinand von Schirach’s play *Terror* opened at the Deutsches Theater Berlin in 2015.[[15]](#footnote-15) In *Terror*, a large audience watches a court case unfold, from their seats, in a traditional theatrical way. At the end, they cast their vote about the verdict on small electronic devices. In a review of the 2017 London staging of *Terror*, theatre critic Michael Billington placed the piece in its historical theatrical context:

Drama invites judgment. One of the oldest plays in the western canon, *The Oresteia*, ends with Athenian jurors deciding whether Orestes should be condemned for matricide. Ferdinand von Schirach’s Terror, a courtroom drama getting its British premiere at the Lyric Hammersmith, ends with a decision as to whether a German air force major is guilty of murder in shooting down a hijacked plane targeting a packed football stadium. The difference is this: in *The Oresteia* we are simply observers but in Terror we become the jurors pressing a button to record our verdict.[[16]](#footnote-16)

Billington notes that one of the effects of placing the decision in the hands of the audience is ‘animated conversation’: ‘It’s fair to say that the play gets the audience talking: I heard, and even took part in, heated interval discussions before the actual vote.’ However, he critiques *Terror* for only giving the audience agency in the form of a vote and not inviting the audience to engage in ‘vigorous public debate.’ He writes: ‘I would only argue that, in getting the audience to vote, it doesn’t go nearly far enough. The real issue is not how people vote but why they vote as they do. I’d like a post-play coda.’[[17]](#footnote-17) In contrast to *Terror*, TJS - with its frequent discussions and the debrief session after the verdict –fulfils the need for ‘vigorous public debate’ and provides the opportunity to reflect on why people vote as they do.

Similarly to TJS, the use of technology in *Terror* makes it straightforward to record and collate voting statistics. As reviewer Tom Keatinge notes:

On the night this reviewer attended, the audience voted in line with most other audiences that have seen the play: a 60/40 vote for not guilty. The play runs a website full of statistics compiled from the productions it has run around the world at which more than a third of a million audience members have voted.[[18]](#footnote-18)

Unlike TJS, in *Terror* the verdict is reached after a single vote, and by a simple majority. This makes the voting patterns (the vote statistics amalgamated across many performances of the piece) quite different from those in TJS. The distribution of the voting results of *Terror* form a quasi-bell-curve of voting percentages centred on the overall 60/40 average result.[[19]](#footnote-19) For TJS, results of the individual sessions are much further apart. We will return to these voting results and the reasons for the discrepancy later – as they are indicative of the group effects of jury deliberation and decision making.

There are other notable productions that have placed members of the public in the role of jurors. The most famous of these is perhaps Milo Rau’s *Pussy Riot’s Moscow Trials*.

There were no actors on stage; instead there were real-life protagonists: artists, politicians, church leaders, lawyers, and a judge. A lay court made up of six Moscow residents was intended to reach a verdict: for or against democracy, for or against artistic freedom.[[20]](#footnote-20)

The trial, a one-off performance or ‘re-enacted show trial’ ran over three days in Moscow’s Sakharov Centre. These six Moscow residents were genuinely free to come to their own decision, based on the evidence they heard. Rau also created other productions that took the form of trials or tribunals involving real people: most notably, *The Congo Tribunal*, held at the Collège Alfajiri in Bukavu and the Sophiensaele Theatre in Berlin in 2015, which followed the structure of a tribunal as it set out to investigate the ongoing Congolese civil wars; and *The Zurich Trials*, which created a ‘trial that never happened’ in Switzerland against a right-wing newspaper exploring the issue of freedom of speech.[[21]](#footnote-21)

Another theatrical production in which audience members take on the role of jurors is *Trial by Jury*, ‘an immersive theatre production’ staged at St George’s Hall in Liverpool in 2018 by theatre company Lovehistory.[[22]](#footnote-22) The piece, staged in a building that had previously been the venue for an assize court, involved the re-enactment of a historical trial by actors taking on the roles of judge, barrister and the different witnesses. After hearing testimonies, the audience retired to a separate room to deliberate. At the end of the piece, they are informed of the decision the historical jury reached and what happened to the accused. Unlike TJS, *Trial by Jury* is framed in terms of ‘detective skills’ and the finding of the ‘right’ answer – which is presumably the answer that the original jury had arrived at.

*Silence in Court* from theatre company emeraldBLUE – staged at the Edinburgh Fringe in 2011, 2013 and 2019 – also features audience members taking on the role of jurors.[[23]](#footnote-23) Upon arriving at the venue, audience members are asked whether they want to be jurors or spectators. Ten audience members take on the role of jurors and sit on stage. The trial that unfolds is a rape case and the audience hear testimonies from the complainant, Jennifer Lyons, who claims she has been raped in a nightclub by the defendant Charles Brand. The lawyers for the Prosecution and the Defence each make their cases. In a departure from actual legal process, the jury are given the opportunity to cross-examine witnesses and the spectators are invited to suggest questions for the jury to ask and share whether they believe the verdict should be guilty or not guilty. Reviews praise the production and observe how easy it is to take on the role of a juror: ‘[…] in contrast to other examples of this genre where we may be asked to take on past lives we haven’t lived. The transition from real life to participant is seamless and un-troubling.’[[24]](#footnote-24) This is a fact that we observed in TJS too. It is also interesting to note the reviewers’ frustrations. Iskra Hearn[[25]](#footnote-25) writes that ‘it is extremely difficult, if not impossible, for a correct verdict to be reached given the information supplied’ – a comment which assumes that a ‘correct’ verdict exists outside of what the jury decides. William Glenn notes that while the piece ‘opens the floor for debate’, it fails to provide closure: [W]hile this […] gets us talking (I overheard two of the ‘jurors’ animatedly discussing the case in the gents after the show) I do find myself wanting some indication of emeraldBLUE’s stance on the issues they raise so effectively.[[26]](#footnote-26)

A curious position is occupied by Grid Iron’s *Jury Play* which ran at Edinburgh’s Traverse Theatre in 2017. At the start of the piece, fifteen audience members are selected to become part of the jury observing a murder case (fifteen being the number of people in a jury in Scottish criminal cases). Based on academic research[[27]](#footnote-27) that interrogates the meaning of juror participation, it is primarily aimed at demonstrating the shortcomings of the UK trial system, rather than an opportunity for audience members to take on the role of juror. This different focus leaves several reviewers with mixed feelings, noting missed opportunities for true immersion and perceiving the play as overly didactic.[[28]](#footnote-28) Emily Hall writes: ‘The jurors are rarely used in their capacity as audience members. […] They stand up and sit back down to represent the passage of time, or pull cobwebs over themselves in periods of boredom, but never do they interact with the piece in a meaningful way.’[[29]](#footnote-29)

As the review comments of the above pieces show, audience members do not only value the opportunity for agency that participation in a jury trial performance offers, but they also ask for opportunities to discuss, to reflect on the process of decision making, and to have additional opportunities for closure. Providing meaningful participation, as well as closure – but *not* simply in the form of providing participants with a ‘correct’ verdict at the end – was one of our preoccupations when creating TJS. We addressed the former with the frequent voting and discussions during the immersive experience, and the latter with the debrief session, which was deliberately designed to give a sense of closure and, to a limited extent, share our stance on the issues raised in the piece.

To summarise, TJS differs from past theatrical renditions of jury trials in a number of ways:

* There are only twelve audience members who take on the role of juror and actively participate in deliberating the verdict. There are no additional spectators.
* The piece focusses on the jury deliberation component of a trial.
* There are no live actors, though actors appear in audio and video testimonies.
* All media is delivered – interactively – via iPads, and key pieces of evidence are open for reinvestigation during the discussion phases of the piece.
* Rather than being spectators for most of the performance, the audience spend a significant proportion of their time speaking and discussing the case, as well as occasionally reading out the role of e.g. journalists and barristers.
* There is no ‘ground truth’ or ‘correct verdict’ hidden inside the evidence for the jurors to uncover through clever sleuthing skills.
* The debrief session provides an opportunity for audiences to reflect on their participation in the piece, and to find closure.

***Law and Interactive Digital Narratives***

TJS is an interactive digital performance and thus sits at the intersection between performance and video games; the piece is experienced through iPads and the participant/player makes decisions during the piece which affect the outcome. The review of TJS in Felix Online (a student magazine) called it ‘an interactive 12-person game’.[[30]](#footnote-30) Miro Magazine’s theatre reviewer called it ‘a compelling psychological experiment-cum-theatre piece’[[31]](#footnote-31) while theatre and performance criticism website The Play’s The Thing wrote ‘I’m not sure whether this is a play, event, experiment, or interactive performance’.[[32]](#footnote-32)

Craig Newberry-Jones argues that video games differ ‘from other modern cultural texts by providing the user with an active experience, instead of mere passive observation’.[[33]](#footnote-33) This is also true of interactive digital performances like TJS. Newberry-Jones goes on to argue that ‘video games encourage the player to critically interrogate [themes of justice] in a more profound way than other modern texts due to their phenomenological characteristics.’ Newberry-Jones describes phenomenology as the study of ‘conscious experience from the subjective or first-person point of view.’[[34]](#footnote-34) He focuses his discussion of phenomenology on the idea of the “life-world” which he defines as ‘the world as perceived or experienced by the individual in everyday life.’[[35]](#footnote-35) He claims that ‘whereas law and legal processes exist as a social experience in the individual's life-world, justice is a more abstract concept.’[[36]](#footnote-36) However, he argues that the active engagement that video games (and, we would argue, interactive theatre) ‘allow the individual to experience notions of justice through the game's life-world’[[37]](#footnote-37) in a concrete way. He claims that this is a more profound engagement than that offered by more traditional media:

Whereas the format and codes of communication found in cinema and television are largely based around the role of the audience as passive observer or officious bystander, the role of the user in video games is that of active experimenter or experiencer. Video games place decisions and narratives in the hands of the user and allow the player to immerse himself more substantially in the subject matter of the text, engaging more substantially with themes and motifs, choices and decisions.[[38]](#footnote-38)

Interactive theatre similarly places decisions in the hands of the participant and consequently permits the players to immerse themselves more substantially in the themes. Newberry-Jones points out that the experience of playing a video game alternates between a passive and active engagement. TJS similarly alternates between active and passive engagement, with audience members switching between viewing the evidence and voting on and discussing the case. Newberry-Jones claims that ‘while there has always been a phenomenological public engagement with law, legality and justice, there has been a shift in recent decades from active public engagement to passive observation, but video games are reviving a more active engagement.’[[39]](#footnote-39) TJSis similarly part of this revival and its popularity (performance runs at Battersea Arts Centre, Dublin Fringe and other venues sold out well in advance) arguably attests to an appetite among the public for such an active engagement. Newberry-Jones argues that the decision-making process that video games permit allow ‘the individual player to experiment with his own conceptions of justice’ and this particular type of phenomenological engagement (outlined above) ‘allows players to experience justice and carry forward beliefs [embedded in the video game and formed by the experiences the player has within it] into their own consciousness’.[[40]](#footnote-40) This allows them to conceptualise justice through active participation. TJS similarly allows audience members to experiment with their own conceptions of justice and carry forward beliefs into their own consciousness from the discussions they have and the votes they take. For example, audience members often weigh up the importance of ‘believing the victim’ vs the importance of ‘reasonable doubt’, coming to a decision about which is more important in their own conception of justice.

**Mock Jury or Jury Simulation Research**

The previous examples of theatrical performances use the jury trial format to create a dramatic context for audience participation in the questioning of social issues. In contrast, mock jury research has as primary aim to study the jury decision-making process itself. There exists a long tradition of this kind of research at the intersection of law and psychology.[[41]](#footnote-41) In order to achieve verisimilitude to real-life jury trials, mock jury studies often rely on some narrative or dramatic re-enactment of trials. The earliest jury research study featuring the live re-enactment of a trial was conducted in 1940 in the US.[[42]](#footnote-42) In England, the first jury simulation study took place in 1973.[[43]](#footnote-43) It relied on audio recordings of actors reading out transcripts of actual court cases. A 2001 review article identified a further 136 mock jury studies between 1955 and 2001 – most of them in the US.[[44]](#footnote-44) Studies before 1985 relied mostly on written trial materials; since 1985, most studies use audio and/or video recordings.[[45]](#footnote-45)

Since the inception of mock jury studies, the applicability and generalisability of their findings to real-life jury decision making has been the subject of heated debate.[[46]](#footnote-46) The main areas of criticism of particular studies are: absence of jury deliberation (hence studying *juror* rather than *jury* decision making); an overreliance on student populations as research subjects; and poor trial stimulus materials (e.g., written transcripts rather than re-enactments). Recent studies have attempted to overcome the perceived limitations of these earlier studies. For instance, in a large-scale project commissioned by the Scottish government, jurors where sampled from the community with the overall demographic makeup of the jurors (age, gender, education level etc.) representative of the Scottish population.[[47]](#footnote-47) Selected jurors watched a 60 minute video of a mock trial (either a rape or an assault case) which had been reviewed for realism by legal practitioners. After the trial, jurors debated for up to 90 minutes to reach a verdict. A pair of recent English jury simulation studies used live re-enactments of mini rape trials with key roles played by actors and experienced barristers.[[48]](#footnote-48) As in the Scottish study, scripts were reviewed by legal experts, jurors were drawn from the general public, and the re-enactments were followed by group deliberations of up to 90 minutes.

These mock jury studies – in their efforts to mimic as closely as feasible the settings of real-life trials – speak of ‘maximising the realism’ of their study designs. But what does that mean? Long-time jury researcher Norbert Kerr refers to an interesting distinction between two kinds of realism introduced into experimental psychology in 1968 by Elliot Aronson and Merrill Carlsmith: ‘mundane’ and ‘experimental’ realism.[[49]](#footnote-49) The former refers to how similar an experimental context is to the situation it aims to study; the latter to how much an experimental context triggers the same psychological processes that are triggered by the real-life situation – how real it *feels* to take part. A particular study can be high in both mundane and experimental realism, but that is not necessarily the case: studies can be high in mundane realism and low in experimental realism, and vice versa. Kerr writes: ‘Aronson and Carlsmith argued (and I agree) that they are not the same thing and that in most cases, achieving high experimental realism is more important than achieving high mundane realism.’[[50]](#footnote-50)

As we discussed earlier, TJS was conceived as a combination of playable theatre and experiment in group decision making. Creating a ‘believable’ legal context was of course important given the content of the piece, but we also designed the structure with other constraints in mind: to maximise participant engagement and immersive absorption; to allow the performance to be easily portable to different cultural venues etc. In our view, these design decisions affect predominantly the mundane realism of the piece. Despite the obvious differences with the format of real-life jury trials, TJS contains many of the elements that are critical for achieving high experimental realism.[[51]](#footnote-51) It triggers the basic psychological processes of real-life jury decision-making in the following ways:

* It asks jurors to investigate, discuss and weigh up the importance of various strands of ambiguous, inconclusive and/or conflicting evidence.
* It asks jurors to judge the trustworthiness of different parties to the case who provide contradictory testimonials.
* It asks jurors to test whether the burden of proof (i.e., the prosecution needs to prove guilt), and the standard of proof (‘beyond reasonable doubt’) are satisfied.
* It asks jurors to take several votes on a guilty/not-guilty decision.
* It includes group deliberation, disagreement, and pressure for group consensus.

We would argue that it is these aspects of experimental realism in combination with sufficient levels of mundane realism (e.g. the level of detail in evidence reports; the language used in the closing statements of the defence and prosecution etc.) which lead participants to experience their engagement in TJS as both ‘feeling real’ and ‘realistic’ (for those who have taken part in actual jury duty). It is in light of this concept of experimental realism that we will proceed with discussing what insights TJS can offer into real jury decision making, and make some comparisons with the Scottish and English studies described above. The results we discuss below come from the voting data gathered on the tablets, in combination with observations and notes taken of the group discussions during and after the performances.

**TJS Insights into the Jury Deliberation Process**

A number of barristers and other legal professionals have come to participate in TJS – perhaps unsurprisingly, given its subject matter and format. One of them commented that he came on a ‘busman’s holiday’ to get a sense of what it might be like in a jury deliberation room as it is a situation that played a major role in his professional life but that he could never participate in. He found it fascinating to see how participants responded to different types of evidence and different forms of persuasion. Another participant who teaches trainee barristers commented that the piece might be used as a training tool for barristers, whereas participants who work for the National Justice Museum commented on its usefulness as an experiential learning tool for jury service. We agree with the potential usefulness of TJS as a scalable learning tool for legal practitioners and the public. We have also become aware that – for many participants as well as for us – TJS raises more profound questions about the jury system. Here we will discuss three specific factors: the wide range of outcomes of the jury deliberation process; the impact of individual dispositions and argumentation styles on jury decision making; and the role that the concept of ‘reasonable doubt’ plays in deliberations.

***TJS verdicts range from unanimously guilty to unanimously not guilty***

*‘Now these are facts. You can’t refute facts.’[[52]](#footnote-52)*

In TJS, the ‘facts’ of the case are always the same and delivered in the exact same sequence and format. The delivery of witness testimonies via the iPads ensures this: across most of the piece, there are no differences in quality of acting or emphasis within the acting of the performers, as might be the case in live theatrical performances or trial re-enactments.[[53]](#footnote-53) The fact that the actors have been filmed ensures they give exactly the same performance every time. Despite this uniformity of content and delivery, we have observed the entire range of potential outcomes across the 80 performances conducted to date: from unanimously guilty to unanimously not guilty, and any outcome in between. **Figure 5** shows the distribution of guilty votes recorded in the final voting round of each performance. 33/80 performances (41%) ended in a guilty verdict (10 or more guilty votes); 10/80 (12%) ended in an outright not-guilty verdict (0 to maximum 2 guilty votes); and 37/80 sessions (47%) remained split until the end (also generating a not-guilty verdict – see ***Story and Structure*** for an explanation of how the piece ends if no consensus emerges).

[INSERT FIGURE 5 AROUND HERE]

What drives those divergent outcomes is the dynamics of the group discussions more than anything else. This was one of the psychological factors we expected to emerge from the piece. One of the primary sources of inspiration for the structure of TJS was a paper on informal communication in groups, written in 1950 by social psychologist Leon Festinger.[[54]](#footnote-54) Festinger argued that, the harder it is for people to judge ‘physical’ reality, the more pressure they feel to get ‘social’ reality on their side; in other words, we need people to agree with our own position. Festinger speculated that the resulting pressure for group uniformity can lead to 1 of 3 qualitatively different outcomes: either the group reasons itself to a consensus; or it splits into two opposing camps, each large enough to find confirmation in the opinions of like-minded people; or, finally, the group reaches a near-unanimous agreement, with one or two people holding out against the group consensus. Festinger argued that, in this case of near unanimity, those who hold out are at risk of being ostracised from the group. Added to the usual ‘informal’ group pressure is the explicit pressure created by the legal instructions to reach a unanimous verdict. The combined effect of these pressures is that unanimous or near-unanimous (guilty as well as not-guilty) verdicts – those at either end of the distribution in Figure 5 – are much more frequent than one would expect if jurors were *not* influenced by others. Indeed, in contrast to the final votes in Figure 5, which are distributed near-uniformly (despite being heavily biased towards guilty), the distribution of *first* votes (taken blindly and before any discussion has taken place) is roughly a bell curve (a normal distribution) around the grand average of guilty votes (standing at 59% at the time of writing). A bell curve is the expected voting result in the absence of group pressure and was also the observed voting pattern across the performances of Von Schirach’s *Terror* where participants had only one vote and virtually no opportunity for group discussion. The effect of jury deliberation can therefore be described as making the more extreme verdicts more likely.

How do groups achieve uniformity or, conversely, split into opposing camps? It is not so much achieved by direct, ostensible persuasion of their peers, but through the fact that different groups will home in on and attach importance to different subsets of the ‘facts’. In other words, a ‘group think’ or ‘group confirmation bias’ is likely to emerge. When groups lean towards a guilty verdict, they predominantly discuss and come to agree on arguments that point to the guilt of the accused. When groups lean towards a ‘not guilty’ verdict, they usually focus on whether the weight of the evidence is enough to satisfy the standard of proof. Conversely, when groups split into 2 camps, they carve out different subsets of arguments to congregate around. In those situations, we often see that opposing camps start to speak at cross-purpose, no longer able to reach each other with the arguments they make.

Ellison and Munro, in analysing the transcripts of the deliberations of the English mock jury studies on rape trials discussed earlier, come to similar conclusions. Juries, they write, engage first individually and then collectively in a process of story-construction, out of the combination of factual evidence, their evaluation of the credibility of the parties involved, (occasionally) the legal instructions, and their prior experiences and views of how life ‘is’. [[55]](#footnote-55)

It might be tempting to assign the dramatically different group outcomes to sampling effects caused by the relative audience uniformity or self-selection in the different cultural contexts where we have conducted performances of TJS.[[56]](#footnote-56) No doubt, initial dispositions and cultural norms strongly affect final verdicts – as we will discuss below. However, on several occasions, we have seen performances on the same day and in the same location end up with diametrically opposite verdicts. The most striking example of this occurred in 3 sessions we conducted with students from the same cohort at a UK university, all on the same day and in the same room. The first of these sessions ended in a unanimous not-guilty verdict, the second in an almost unanimous guilty verdict, while the third ended up with a split vote. We will return to the significance of this wide diversity of verdicts in the conclusion.

***Impact of individual dispositions and argumentation style on group decision making***

*‘You know what the soft sell is? Well, you’ve got it, believe me.’[[57]](#footnote-57)*

People are of course not solely influenced by group dynamics. The initial disposition of individuals and the strength of the opinions they form have a considerable effect on the final outcome too. Indeed, one of the other psychological factors we expected to show up in the voting patterns was the ‘consistency effect’. It refers to the fact that people – when making a decision on an issue that matters to them - tend to stick to this decision, and want to justify it to themselves and others, rather than revise it.[[58]](#footnote-58) To test the strength of the consistency effect, we ask people to take a first vote roughly ten minutes into the piece, when they have hardly seen any evidence, and then ask them again at different moments throughout, up to a maximum of 6 times. Although we frequently hear jurors complain, at the first vote, they do not yet want to make a decision, they *have* to take the vote – in effect forcing them ‘off the fence’.[[59]](#footnote-59) We expected to see a consistency effect come out clearly in the individual voting patterns – but were surprised by the strength of the effect: roughly 50% of all jurors *never* changed their vote from the one they cast at the start.[[60]](#footnote-60) A further 37% changed their vote only once throughout the discussions – usually to bring it in line with an emerging group consensus. The remaining 13% change their votes more than once – indicating a greater undecidedness or greater influence from the group discussions. Interestingly, these proportions of more and less entrenched votes are quite similar to what Ellison and Munro encountered in one of the English mock jury studies: half of the jurors ended up sticking to their first vote. [[61]](#footnote-61) The difference with TJS is that the first measurement in Ellison and Munro’s study occurred only after jurors had seen all the evidence (before the start of the deliberation), and they still had the option to select ‘undecided’ at that time (which was selected by 34% of the jurors).

During the debrief session, we ask people to discuss with other jurors whether or how often they changed their vote, after which we introduce them to the consistency effect and its underlying psychological driving force: cognitive dissonance, a feeling of psychological discomfort and distress we experience when we feel we are *not* consistent.[[62]](#footnote-62) In response, jurors sometimes start to restate the reasons for their voting behaviour – in effect reaffirming the consistency principle! However, often participants also bemusedly recognise that they voted the same way throughout the piece for consistency’s sake. On one occasion, a juror said during the debrief that he got annoyed with himself at continuing to vote ‘guilty’, even though the group discussions during the piece had increasingly focused on the burden of proof and whether it cleared the threshold of reasonable doubt. This is an example of how the need for internal consistency in one’s voting behaviour, and the pressure for group uniformity during the discussions can introduce its own tension within individual jurors.

With strength of opinion often comes a more forceful style of argumentation. The more strongly an individual juror is convinced of the guilt or non-guilt of the accused, the more strongly they might try to persuade the rest of the group of their own position, and the more they might try to dominate the group discussions. More often than not, this is counterproductive. On several occasions we observed a juror push other jurors away instead of convincing them of their point of view – precisely because they argued too forcefully. Jurors sometimes admit during the debrief or after the performance that they became aware of the growing antagonism of other group members, and softened their argumentation style accordingly. Sometimes, however, it appears that the jurors in question remain oblivious or do not know how to respond, eventually isolating themselves in a minority position.

Far more effective than forceful persuasion tends to be the ‘soft sell’ used to describe Henry Fonda’s ‘Juror 8’ approach in *12 Angry Men* above. Most of the time when we see such a ‘soft sell’ in TJS, we do not believe that this is a deliberate strategy to ‘win the argument’. Rather, it appears to play out naturally: an argument, made in a tentative and open-ended manner because the particular juror might be uncertain of its merit, manages to persuade that juror themselves as well as some of their peers. We have most often observed this at the moments when ‘reasonable doubt’ enters the discussion.

***The role of ‘reasonable doubt’ in TJS***

* *Still no room for reasonable doubt?*
* *No.*
* *Pardon. Maybe you don’t fully understand the term ‘reasonable doubt’.*
* *What do you mean, ‘I don’t understand’? [[63]](#footnote-63)*

The central test that participants in TJS are asked to apply is the criminal standard of proof: are they convinced ‘beyond reasonable doubt’ that the accused is guilty of sexual assault? Historically, the ‘beyond reasonable doubt’ (BRD) formulation crystallised in the Anglo-American legal system in the second half of the 18th century.[[64]](#footnote-64) To date it is still the primary standard-of-proof formulation in many common law territories[[65]](#footnote-65) with the main exception being England, where judges are advised to instruct jurors they need to ‘be sure’.[[66]](#footnote-66) Due to its long history and iconic use in many courtroom dramas, BRD plays a fundamental role in the public imaginary of the jury trial system. However, as the above passage from *12 Angry Men* epitomises so perfectly, it can be a source of much confusion and disagreement. In one much-publicised trial, the jury’s request to define ‘reasonable doubt’ led the judge to respond that ‘A reasonable doubt is a doubt which is reasonable. These are ordinary English words that the law doesn’t allow me to help you with […].’[[67]](#footnote-67) Both the Scottish and English mock jury studies described earlier contain further examples of the misunderstanding and confusion that can reign in the (mock) jury room, with a substantial proportion of jurors in both studies insisting that one needs to be 100% certain in order to convict (regardless of whether they had been instructed using the BRD or ‘being sure’ formulation).[[68]](#footnote-68) These results are not new and not confined to mock jury studies: surveys and other forms of research among the lay public and legal practitioners alike, in both the US and UK, have demonstrated the huge variability in individual people’s understanding of the phrases used to describe the standard of proof, with estimates ranging from just over 50% to 100% certainty. [[69]](#footnote-69)

The response to this evidence of confusion and divergent interpretations of the standard of proof has varied across legal systems: either to attempt to increase juror’s understanding through additional clarification of the phrase, or to shy away from any form of elaboration. In Scotland, for instance, judges provide a rather long instruction[[70]](#footnote-70) whereas in England judges are instructed that it is unwise to elaborate on the standard of proof.[[71]](#footnote-71) There have been long-standing debates too about the merits of numerical quantification of the BRD threshold, with proponents arguing that it calibrates understanding, and opponents arguing that the standard of proof cannot and should not be quantified.[[72]](#footnote-72) Despite the arguments in favour (occasionally by judges[[73]](#footnote-73)) it appears that there are no jurisdictions which have experimented with a quantified definition of BRD in the courtroom.

In the very first test we ran of TJS, we had left BRD undefined and found ourselves in a room with 12 confused jurors who could not explain to each other what the phrase meant to them, but felt it was important. Concerned about the participants’ experience, we decided to add a definition and – at the time unaware of the long-running controversies around the subject – we selected a lay-public’s explanation from the ‘Beyond Reasonable Doubt’ research project of Cambridge University’s Institute of Criminology which we felt was clear:

Beyond reasonable doubt (BRD) is the standard of proof used to convict defendants charged with crimes in the English criminal justice system. If the decision maker perceives that the probability the defendant committed the crime as charged (based on the evidence) is equal or greater than their interpretation of BRD, then he/she will decide to convict. Otherwise, the decision maker will acquit the defendant. It is generally agreed that BRD should be interpreted as a .91 probability.[[74]](#footnote-74)

The phrase ‘generally agreed’ in conjunction with the precise probability threshold seems to contradict the above assertions that huge variability exists in individual judgements or that many legal practitioners argue that is impossible to quantify BRD. However, in line with a tradition going back to William Blackstone’s statement that ‘[T]he law holds it better that ten guilty persons escape than that one innocent suffer’[[75]](#footnote-75) research to date has shown that the modal response for how judges and other legal practitioners interpret the BRD threshold, or how they believe jurors interpret the threshold, is around the 0.90-0.91 mark.[[76]](#footnote-76)

In the following paragraphs, we thus report on the reactions we observed to a BRD definition that at present would not be given in an actual courtroom, but which inadvertently creates an interesting contrast with past mock jury studies which either defined the phrase verbally (the Scottish jury study) or did not attempt to define the standard of proof at all beyond saying it meant ‘being sure’ (the English jury studies). A first important point to note is that TJS jurors treat the quantified BRD definition seriously, and discuss it in almost every performance. Although the particular quantification (0.91 probability) often leads to bemused comments from the TJS jurors, the authority of the definition is not questioned and has, on several occasions, exerted dramatic effects on jury deliberations. We are therefore reasonably confident that this is a situation high in experimental realism (i.e., the discussions about the definition ‘feel real’ and activate ‘real’ psychological processes in participants) but low in mundane realism (no jurisdictions – at present – employ such quantified definitions).

Despite the quantification – the definition does not necessarily lead to the same understanding. On one occasion, a juror claimed that ‘91% certainty’ felt very high to them, to which another responded that, to them, it didn’t. On other occasions, jurors have reframed the ‘91% certainty’ to state that they were allowed ‘9% doubt’. Such acts of reframing are known, from psychology research[[77]](#footnote-77), to alter people’s understanding of a quantity. It is likely to give jurors a sense of needing *less* certainty than implied by the 91%.[[78]](#footnote-78)

Beyond disagreements about the interpretation of the threshold itself, there is also frequent disagreement among TJS jurors about whether the available evidence reaches or does not reach the threshold. Often, we hear someone say: ‘My gut feeling tells me that he did it, but is there enough evidence to say that I am 91% certain? I don’t think so.’ However, almost as frequently we also hear: ‘Am I more than 91% certain that he did it? You bet!’

Sometimes, jurors decide to ignore the quantification, redefining the meaning of reasonable doubt in a range of ways, from ‘being pretty certain’ to ‘the doubt that a reasonable person would have’ – which we would argue is a cognitive means to bypass a threshold of certainty that feels high to achieve. We have also heard jurors argue that, if the threshold is so high that it cannot be satisfied in cases of sexual assault (where there is often no hard evidence), then it might be necessary to abandon the concept altogether! We will come back to how this reflects people’s distinction between what is just and what is legal in the next section.

Despite these discrepancies of interpretation, it is worth noting that, in all performances of TJS, the supplied definition of BRD and its associated threshold are discussed. This contrasts with the Scottish jury study, where the official instruction given by the judge was lengthy, difficult to parse, and did not contain a precise quantification. Despite the fact that jurors during the deliberations frequently discussed the BRD concept, the researchers wrote: ‘We found no examples of jurors referring directly to the definition of ‘beyond reasonable doubt’ provided by the judge’.[[79]](#footnote-79) As a consequence, it led to frequent misinterpretations of BRD – including that it meant ‘100% certainty’.[[80]](#footnote-80) In other words, the instruction might as well not have been given. In TJS, such strong misinterpretations have never happened so far, reaffirming the findings from earlier research that quantification calibrates understanding.[[81]](#footnote-81)

As discussed in previous sections, the group dynamics and argumentation styles when drawing attention to the BRD threshold might be as important (if not more so) than the individual interpretation effects discussed above. In some performances, BRD is brought up as one of the first points during the first discussion (usually by someone leaning towards not guilty). This leads, more often than not, to the threshold not having much of an effect on how jurors develop a sense of certainty about their verdict. It is almost as if the argument’s powder is spent too early. In other juries, the BRD threshold remains undiscussed until much later in the piece. If it is then brought up, tentatively and in an open-ended manner, it can have profound effects on a group’s verdict. During the most dramatic example, a female juror (who until then had been quiet) brought up the BRD threshold during the third group discussion. This intervention shifted the vote from a 12-0 guilty vote in the immediately-preceding third tentative vote (at which point the piece cannot yet end), to a 10-2 not-guilty verdict at the end. When this juror mentioned BRD, the ensuing discussions started to focus increasingly on the burden and standard of proof, and juror after juror became convinced that there was not enough evidence to reach the threshold. Given the content of the case (alleged sexual assault by a socially powerful male against a socially vulnerable female), the gender of the BRD proponent might play a role, with women generally having more effect when they make this argument than men. Yet, probably more important than the proponent’s gender is *how* the argument is made. On one occasion, a soft-spoken juror’s mention of BRD – the only male in a jury with 11 female jurors – swung a verdict from 11-1 guilty in the fourth vote to 7-5 not-guilty at the end. Again, we observed that this particular juror made his argument in a questioning, open-ended manner – rather than forcefully.

As the case of TJS is ambiguous we ourselves do not know whether the standard of proof is satisfied by the evidence or not.[[82]](#footnote-82) We note, however, that jurors’ perceptions of whether the BRD standard is satisfied are fragile and dependent on the interplay of individual interpretations, argumentation styles, and group dynamics.[[83]](#footnote-83) Therefore, the notion, often implicit in legal process, that giving jurors clear instructions is sufficient to introduce a degree of objectivity and replicability, may not hold true. Sure enough, *without* clear instructions, the situation is almost certainly worse (as the above example of the Scottish and English mock jury research shows) – but even when instructions are more clear, the instructions themselves become part of the decision process, meaning the outcome may still vary considerably.

During the debrief, we frequently point to the role that the BRD concept played during the jury deliberation to clarify the distinction between ‘intuitive thinking’ and ‘reasoning’. The idea, fundamental to much contemporary research in neuroscience and psychology, is that our brains do not engage in one, but in at least two qualitatively different forms of thinking. Neither is ‘right’ or ‘wrong’; they coexist and are brought to the fore in different circumstances. In the debrief, we explain how they interact with reference to the metaphor of Elephant and Rider,[[84]](#footnote-84) likening our intuitive, automatic thinking to a large elephant, and reasoning to a small rider atop the elephant. The rider is rarely in control, but always making up stories as to why it is – justifying our own intuitive responses to ourselves and others far more often than challenging them. Contrary to conventional wisdom, intuitive thinking – shaped by our own lived experiences – is what dominates individual responses to the content of the case, to the witness and character testimonies, and to the interactions with other jurors in the room. Virtually the only ‘control’ the Rider has over the Elephant seems to be through an application of the BRD concept. On those occasions where we have seen jurors go against their gut feeling that the accused is guilty, it is as if the BRD concept allows them to reign in their Elephants and send them in a different direction.

The metaphor of Elephant and Rider, the consistency effect and the pressure for group uniformity (the three critical insights discussed during the debrief) leads some jurors to the realisation that the judgement they came to during the 90 minutes of the piece might have gone another way, had they focussed on different arguments, been part of a different group, or had different prior life experiences. We never state during the debrief that a particular verdict is ‘wrong’, as it could only ever be wrong if Dr Huxtable really existed and either did or did not do what he is accused of. However, what is especially interesting to us with regards to this realisation of jurors is that concepts like BRD exist because legal scholars and society at large concluded that our best ‘reasoned’ insights needed to be codified to allow the Rider to reign in the often-whimsical nature of our Elephant brains. We would argue that most of legal process has been constructed to serve this purpose. However, we also note, as all the discussed examples above show, that the mere codification of an insight does not make it immune to the range of intuitive responses that our life experiences imbue us with.

**Tensions between ‘the legal’ and ‘the just’**

Many commentators have discussed the difference between law, which is defined (if contested), concrete and specific, and justice, which, as Newberry-Jones describes, is ‘something far more metaphysical – an abstract concept that can encompass numerous meanings, interpretations and philosophies.’[[85]](#footnote-85) While the law is a single, fixed thing that is the same (in theory, at least) for all citizens of a country, different citizens may have different conceptions of what is just. These conceptions might be formed and informed by upbringing, culture, education and the ideas of justice explicitly or implicitly articulated in the cultural texts to which they are exposed. Sometimes our sense of justice may exactly align with what the law states but at other times there may be a tension between these two things – for example when the family of a victim or the public feel that the punishment for a crime should be harsher than that prescribed by law or decided by judges. Some of the conversations that occur during performances and debriefs of TJS hinge on this tension between law and justice. Some people say they feel that the just decision would be to find the accused guilty, but they think that the correct legal position is that he is not guilty BRD. These people have to then weigh up whether the value of upholding the law and the underlying principles that support it and the idea of ‘innocent until proven guilty beyond reasonable doubt’ outweighs the value of doing what they personally feel to be the correct and just thing. In these situations, audience members’ internal conflicts mirror those of Agamemnon, that ‘there is no flawless judgement to be made, as none of these is without evils’.[[86]](#footnote-86)

This tension may also be interpreted as reflecting the conflict that Hegel identifies in Sophocles’ *Antigone* between Creon’s ‘abstract right’ and Antigone’s ‘universalised subjectivism’ – her subjective but intensely held morality which she believes applies to the whole world.[[87]](#footnote-87) Lukas van den Berge compares Creon’s ‘abstract right’ to Nussbaum’s discussion of the ‘one-sidedly separative and rationalist’ approaches to law, which Nussbaum critiques, arguing that the ratiocinations of pure reason result in distortions of the legal system.[[88]](#footnote-88) As Julian Etxabe observes Creon and Antigone depict a clash of two legal narratives, the demands of which are mutually incompatible.[[89]](#footnote-89)

In the more evenly split performances of TJS, we sometimes see conflicts between these two legal narratives unfold in discussions between audience members that can approach the levels of passion seen in the exchanges between Creon and Antigone. In one of the most interesting performances of TJS we observed to date, two deeply entrenched sides emerged over the course of the piece. One side was led by a female juror who passionately argued that letting Dr Huxtable go free was a perfect example of how the legal process failed to deliver justice to women. The other side was led by a juror from a post-communist nation and a black juror from inner-city London. They argued, equally passionately, that any lowering of the burden and standard of proof would result in detrimental consequences for the just treatment of other groups in society – as it often had in the past. Same case, same facts, driven by similar values of social justice, and yet, opposing conclusions reached – based on a different experience and understanding of how the just and the legal are related to one another.

There are other conversations that occur frequently which hinge on a tension between what is legally correct and what principles would make a more just society. In this case, the way in which people describe a just society is often one in which victims are believed and in which women are free from the threat of being sexually assaulted by men. Audience members who vote guilty sometimes state that they are voting for the society they want to live in and that this outweighs, for them, the question of whether the case is proven BRD.

**Conclusion**

We have seen that TJS sits in a very long tradition of theatre about law and is part of a more recent trend of theatre performances in which audience members function as a jury. It differs from other such performances, however, in the way that it has only twelve audience members who take on the role of jurors, without additional spectators or live actors. Instead, actors appear in audio and video testimonies, permitting these testimonies to be identical in every performance. The piece also invites a more active jury than other performances through the procedural design of the piece and the way in which the iPads are used to prompt interaction and discussion. It adds a debrief session, providing an opportunity for participants to reflect on their participation in the piece and find closure, in a way that seemed to be lacking in some previous jury-based performances.

We have also discussed the way in which TJS sits on the border between theatre and interactive digital narrative and that the level of interaction that this produces creates a particular type of phenomenological engagement that allows jurors to conceptualise justice through active participation and wrestling actively with questions around what is just and the tensions between the legal and the just.

We have compared TJS to experiments exploring jury decision making, and argued that TJS as a piece of playable theatre may be lower in mundane realism than some recent mock-jury studies, but that it contains many crucial aspects of the jury deliberation context that give rise to high experimental realism. From the results of eighty performances of TJS, it is clear that different juries can be presented with identical evidence and come to radically different conclusions. In accordance with previous mock juror research,[[90]](#footnote-90) this appears to be mainly caused by group dynamics and the way that discussions play out rather than demographic differences between juries or differences in the psychology of individual jurors. We have observed certain strategies that prove effective in influencing other jurors, i.e., the ‘soft sell’ of open-ended questioning often proves more effective than forceful argumentation. A quantified definition of ‘beyond reasonable doubt’ helps to calibrate juror understanding but still leads to a wide range of understandings. We have also argued that these different outcomes and group dynamics reflect the tensions between the ‘legal’ and the ‘just’.

A discussion that audience members want to have in a great many of the debriefs is about whether the jury system is fit for purpose. Our response in these moments is to say that the jury system would appear to be flawed but are the alternatives any better or are juries, to paraphrase Churchill’s famous verdict on democracy, the least bad option? Systems in which the decision rests entirely on the shoulders of judges also seem deeply flawed.[[91]](#footnote-91) We would not wish, however, to advocate any form of complacency. A suggestion that a number of audience members have made during the debrief is for jurors to receive training in unconscious bias and group psychology. We believe that this could be effective because building an experiential awareness of our own decision making propensities offers some protection against making poor decisions. Interestingly, TJS serves both as a tool to help people realise this need, as well as a source of experiential learning about group psychology. Deploying TJS at scale as a training tool for prospective jurors would obviously require resources, but might be beneficial both to the legal process and to society more widely, if jurors were to take what they have learned into the rest of their lives.

Another discussion that audience members frequently want to have during the debrief is about the challenges involved in convicting perpetrators of sexual assault as there is often just the conflicting words of two people, meaning that it is difficult to decide that someone is guilty beyond reasonable doubt.[[92]](#footnote-92) Sometimes this becomes a discussion about whether or not the criminal justice system is the right way to deal with cases such as this and whether some form of restorative justice might be more appropriate. These discussions obviously occur within a self-selecting proportion of the public but might inspire valuable policy research.

There are many things about our observations of performances of TJS that give us optimism about juries. The great majority of people want to come to the right decision, rather than win the argument. They value the contribution that other jurors who disagree with them make to discussions, because this allows them to see the case from different angles, think about the evidence differently and feel, at least, that they are coming to a more informed decision. People are kind and respectful to each other, including those they disagree with, in a way that seems entirely different from the online space of social media such as Twitter or the combative mainstream political discourse in the UK. More often than not, a performance of TJS restores our faith in humanity, rather than diminishing it.

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**Figure 1** Typical setup of a TJS jury deliberation room.

A picture containing sitting, remote

Description automatically generated

**Figure 2** Screenshots from the first section of TJS (an extract from BBC London news) (left), the welcome and tutorial screen (centre) and the voting screen (right)

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**Figure 3** Fictional newspaper covers handed out to jurors at the end of each performance – one for when the room reaches a guilty (left) or not-guilty (right) verdict.



**Figure 4** Website advertising TJS at Dublin Fringe. Note how the marketing copy emphasises the active nature of being an audience member.

A close up of text on a white background

Description automatically generated

**Figure 5** Distribution of ‘guilty’ votes at the end - for a total of 80 performances and a total of 861 final votes cast. Ten or more guilty votes translates into a ‘guilty’ verdict. From 0 to 2 votes translates into an outright not-guilty verdict, whereas from 3 to 9 votes means the jury remains split until the last vote – which also translates to not-guilty (see ***Story and Structure*** why this is the case). Not all TJS sessions have 12 jurors. For those with less than 12 jurors, the vote number has been re-normalised to 12 and rounded to the nearest whole number to produce the graph. This means that, for instance, a verdict where 9 out of 10 jurors voted guilty at the end, would end up in the graph in the bar with 11 out of 12 guilty votes.

1. Alan Read, *Theatre and Law* (Red Globe Press, 2016) [↑](#footnote-ref-1)
2. Dan Barnard and Kris De Meyer ‘The Justice Syndicate: Using iPads to increase the intensity of participation, conduct agency and encourage flow in live interactive performance’ (2020) *International Journal of Performance Arts and Digital Media* 16:1 68-87 [↑](#footnote-ref-2)
3. Joanne R. Smith and S. Alexander Haslam *Social Psychology: Revisiting the Classic Studies* (Sage, 2017) [↑](#footnote-ref-3)
4. Not unrealistically though. Barristers and other legal professionals who attended TJS have commented that real-life cases can have an even more ambiguous and conflicting mixture of evidence and testimonies. [↑](#footnote-ref-4)
5. That does not prevent individual jurors from becoming certain of their verdict, as we will discuss later. [↑](#footnote-ref-5)
6. At the start of the performance, participants have been clearly told that they can leave at any time. The jeopardy is hence not ‘forced’ but a natural consequence of their absorption into the performance. Similar to e.g. watching a captivating film or theatre play, participants do not *want* to leave until a decision is reached. [↑](#footnote-ref-6)
7. Barnard and De Meyer (n2) [↑](#footnote-ref-7)
8. Franco Milazzo ‘The Justice Syndicate’ (15 February 2019) *The Londonist* <https://londonist.com/london/on-stage/the-justice-syndicate-battersea-arts-centre> Accessed 10 May 2020. [↑](#footnote-ref-8)
9. Lara Alier ‘The Justice Syndicate’ (18 February 2019) *The Play’s the Thing* <https://theplaysthethinguk.com/2019/02/18/the-justice-syndicate-battersea-arts-centre/> Accessed 10 May 2020 [↑](#footnote-ref-9)
10. Read (n1) p.75 [↑](#footnote-ref-10)
11. Reginal Rose *Six Television Plays* (Simon and Schuster, 1956) [↑](#footnote-ref-11)
12. Ibid. p156 [↑](#footnote-ref-12)
13. Josephine Machon *Immersive Theatres; Intimacy and Immediacy in Contemporary Performance* (Palgrave Macmillan, 2013) [↑](#footnote-ref-13)
14. Dan Barnard and Kris De Meyer (n2) [↑](#footnote-ref-14)
15. ‘Terror by Ferdinand von Schirach’ <https://www.deutschestheater.de/en/programme/archive/p-t/terror/> accessed 28 January 2020 [↑](#footnote-ref-15)
16. Michael Billington ‘You, the jury: plays are giving power to the people’ *The Guardian* (22 June 2017) <https://www.theguardian.com/stage/2017/jun/22/terror-lyric-hammersmith-london> accessed 28 January 2020 [↑](#footnote-ref-16)
17. Ibid. [↑](#footnote-ref-17)
18. Tom Keatinge ‘A Modern Day Trolley Problem: A Review of Terror’ (2017) *The RUSI Journal 162:3* [↑](#footnote-ref-18)
19. ‘Terror – Distribution of votes’ <https://terror.theater/cont/results_main/en> accessed 28 January 2020 [↑](#footnote-ref-19)
20. Milo Rau ‘Pussy Riot’s Moscow Trials: Restaging Political Protest and Juridical Metaperformance’ in Alex Flynn and Jonas Tinius (eds), *Anthropology, Theatre, and Development: The Transformative Potential of Performance* (Palgrave Macmillan 2015) [↑](#footnote-ref-20)
21. Avi Feldman ‘An Interview with Milo Rau’ *On Curating* <https://www.on-curating.org/issue-28-reader/an-interview-with-milo-rau.html#.XjFqPjL7Rpg> accessed 28 January 2020 [↑](#footnote-ref-21)
22. Beth Easton ‘Trial by Jury – St George’s Hall, Liverpool’ *North West End* (15 March 2018) <https://northwestend.co.uk/index.php/professional-reviews/liverpool/2880-trial-by-jury-st-george-s-hall-liverpool> accessed 28 January 2020 [↑](#footnote-ref-22)
23. Hugh Simpson ‘Review – Silence in Court’ (12 August 2013) <http://www.alledinburghtheatre.com/review-silence-in-court/> accessed 28 January 2020 [↑](#footnote-ref-23)
24. William Glenn ‘Silence in Court’ (7 August 2013) <http://fringereview.co.uk/review/edinburgh-fringe/2013/silence-in-court/> accessed 28 January 2020 [↑](#footnote-ref-24)
25. Iskra Hearn ‘Silence in Court’ (18 August 2019) <http://www.alledinburghtheatre.com/silence-in-court-edinburgh-little-theatre-edfringe-2019-review/> accessed 28 January 2020 [↑](#footnote-ref-25)
26. William Glenn (n24) [↑](#footnote-ref-26)
27. Jenny Scott ‘From presence to participation – the role of the juror reimagined’ (2017) *Law and Humanities* 11:2 286-308 [↑](#footnote-ref-27)
28. Liam Rees ‘Jury Play – Traverse Theatre’ *The Play’s The Thing UK* (8 October 2017) <https://theplaysthethinguk.com/2017/10/08/jury-play-traverse-theatre/> accessed 28 January 2020; Joseph McAulay ‘Jury Play’ *Young Perspective* (9 October 2017) <http://young-perspective.net/jury-play/> accessed 28 January 2020. [↑](#footnote-ref-28)
29. Emily Hall ‘Jury Play’ *The Student* (6 October 2017) <https://studentnewspaper.org/jury-play/> accessed 28 January 2020. [↑](#footnote-ref-29)
30. Claire Chan ‘The Justice Syndicate: An innovative, incisive, and much-needed scrutiny of our attitudes in the #MeToo era.’ (22 February 2019) <http://felixonline.co.uk/articles/2019-02-22-the-justice-syndicate> accessed on 3 February 2020 [↑](#footnote-ref-30)
31. Sophie Talbot ‘Heart vs Gut in The Justice Syndicate’ (February 2019) <http://www.miromagazine.com/theatre/review-justice-syndicate-fanshen> accessed on 3 February 2020 [↑](#footnote-ref-31)
32. Lara Alier (n9) [↑](#footnote-ref-32)
33. Craig John Newberry-Jones ‘Answering the call of duty: the phenomenology of justice in twenty-first-century video games’ (2015) *Law and Humanities* 9:1 78-102 [↑](#footnote-ref-33)
34. Ibid. [↑](#footnote-ref-34)
35. Ibid. [↑](#footnote-ref-35)
36. Ibid. [↑](#footnote-ref-36)
37. Ibid. [↑](#footnote-ref-37)
38. Ibid. [↑](#footnote-ref-38)
39. Ibid. [↑](#footnote-ref-39)
40. Ibid. [↑](#footnote-ref-40)
41. Brian H. Bornstein and Amy J. Kleynhans ‘The Evolution of Jury Research Methods: From Hugo Munsterberg to the Modern Age’ (2018) *Denver Law Review* 96: 813. [↑](#footnote-ref-41)
42. H.P. Weld and E.R. Danzig ‘A study of the way in which a verdict is reached by a jury’ (1940) The American Journal of Psychology 53 p518–536. [↑](#footnote-ref-42)
43. A.P. Sealy and William R. Cornish ‘Jurors and their verdicts’ (1973) *The Modern Law Review* 36.5 496-508. [↑](#footnote-ref-43)
44. Dennis J. Devine et al. ‘Jury decision making: 45 years of empirical research on deliberating groups.’ (2001) *Psychology, public policy, and law* 7.3: 622-727. [↑](#footnote-ref-44)
45. Ibid. [↑](#footnote-ref-45)
46. For a few of the more recent papers summarising the debate, see Brian H. Bornstein ‘The Ecological Validity of Jury Simulations: Is the Jury Still Out?’ (1999) *Law and Human Behaviour* 23p75–91; David DeMatteo and Natalie Anumba ‘The validity of jury decision-making research.’ (2009) in J. D. Lieberman & D. A. Krauss (Eds.), Psychology, crime and law series. Jury psychology: Social aspects of trial processes: Psychology in the courtroom, Vol. 1 p1-23; Joel D. Lieberman, Daniel A. Krauss, Miliaikeala Heen and Mari Sakiyama ‘The good, the bad, and the ugly: Professional perceptions of jury decision‐making research practices’ (2016) *Behavioral sciences & the law* 34(4): 495-514. [↑](#footnote-ref-46)
47. Rachel Ormston, James Chalmers, Fiona Leverick, Vanessa Munro and Lorraine Murray ‘Scottish Jury Research: findings from a large-scale mock jury study’ (2018) <https://www.gov.scot/publications/scottish-jury-research-fingings-large-mock-jury-study-2/> accessed on 28 January 2020 [↑](#footnote-ref-47)
48. Louise Ellison and Vanessa E. Munro ‘Getting to (not) guilty: examining jurors' deliberative processes in, and beyond, the context of a mock rape trial.’ (2010) *Legal Studies* 30.1: 74-97; Ellison, Louise, and Vanessa E. Munro. ‘Telling tales: exploring narratives of life and law within the (mock) jury room.’ (2015) *Legal studies* 35.2: 201-225. [↑](#footnote-ref-48)
49. Norbert L. Kerr. ‘Suggested do's and don'ts for future jury research: A swan song’ (2017) In M. B.

    Kovera (Ed.) *The psychology of juries* 257-285 Washington DC: APA. The distinction between mundane and experimental realism was introduced in Elliot Aronson and Merrill Carlsmith ‘Experimentation in social psychology’ (1968) In G. Lindzey & E. Aronson (Eds.), *The handbook of social psychology* (2nd ed.,

    Vol. 2, pp. 1–79). Reading, MA: Addison Wesley. [↑](#footnote-ref-49)
50. Norbert Kerr (n49) [↑](#footnote-ref-50)
51. This depends, of course, on the specific psychological factors one aims to study. Grid Iron’s *Jury Play* and the research into jury participation on which it was based (n27) focussed on the lack of active participation, the boredom and the disengagement that real jury trials can induce. The design of TJS (with its focus on high participant engagement) aims for the opposite of that feature of actual jury trials. In our view this is unlikely to reduce the experimental realism of the piece – at least with regards to many of the psychological factors in jury decision making. If a study aimed to research the influence of levels of juror engagement on jury verdicts, then it would have to replicate conditions that induce disengagement. However, that is not what we focus on. [↑](#footnote-ref-51)
52. Reginald Rose *12 Angry Men Movie Script* (1957) <https://www.springfieldspringfield.co.uk/movie_script.php?movie=12-angry-men> accessed 28 January 2020 [↑](#footnote-ref-52)
53. The exception are the occasional pieces performed by jurors, e.g. the reading of the BBC news report at the start, or the statements for the Defence and Prosecution. We return to these performance issues below. [↑](#footnote-ref-53)
54. Leon Festinger ‘Informal Social Communication’ (1950) *Psychological Review* 57: 271 [↑](#footnote-ref-54)
55. Ellison and Munro (n48) [↑](#footnote-ref-55)
56. One question we are often asked during the debrief is whether gender affects the voting behaviour of jurors. In our sample to date, the answer is no: the men who attend are practically equally likely to convict as women. There are gender differences in attendance rates, with a ratio of female to male participants of about 2:1. This is in line, however, with general theatre attendance rates, where women account for about 65% of theatre ticket sales. Purple Seven *Gender in Theatre* (2015) <http://purpleseven.com/media.ashx/gender-thought-leadership.pdf> accessed 11 May 2020. [↑](#footnote-ref-56)
57. Reginald Rose (n52) *12 Angry Men* [↑](#footnote-ref-57)
58. Robert B. Cialdini *Influence: The Psychology of Persuasion* (Harper Collins, 2007 – revised edition). [↑](#footnote-ref-58)
59. Note that they take this first vote – as all others – blindly on the tablets, without needing to show anyone else how they are voting. We do this in order to exclude explicit peer pressure on the voting behaviour itself. This may be different from a real jury context, where votes are often taken publicly. The stating of a public position is likely to lead to an even stronger consistency effect than the taking of a blind vote. [↑](#footnote-ref-59)
60. Roughly two thirds of these consistent jurors vote guilty, and one third vote not guilty. [↑](#footnote-ref-60)
61. Ellison and Munro (2010) (n48) p86 [↑](#footnote-ref-61)
62. Robert Cialdini (n58) *Influence*. [↑](#footnote-ref-62)
63. Reginald Rose (n52) *12 Angry Men* [↑](#footnote-ref-63)
64. John H. Langbein ‘The Origins of Adversary Criminal Trial’ (2005) Oxford University Press 261-265; Barbara J. Shapiro ‘Beyond Reasonable Doubt: The Neglected Eighteenth-Century Context.’ (2014) *Law and Humanities* 8.1: 19-52 [↑](#footnote-ref-64)
65. Chris Heffer 'Beyond reasonable doubt': The criminal standard of proof instruction as communicative act. (2006) *International Journal of Speech, Language and the Law* 13.2: 159-188. [↑](#footnote-ref-65)
66. Martin Picton et al., ‘The Crown Court Compendium Part I: Jury and Trial Management and Summing Up’ (2019) <https://www.judiciary.uk/publications/crown-court-compendium-published/> accessed 11 May 2020. [↑](#footnote-ref-66)
67. ‘Ten questions posed by Vicky Pryce jury’ *BBC News* (20 February 2013) <https://www.bbc.co.uk/news/uk-21521460> accessed 11 May 2020. [↑](#footnote-ref-67)
68. See Rachel Ormston et al. (n47) and both references to Ellison and Munro in (n48) [↑](#footnote-ref-68)
69. For a few examples, see John W Montgomery ‘The criminal standard of proof’ (1998) *New Law Journal* 142:582; Michael Zander ‘The criminal standard of proof: how sure is sure?’ (2000) *New Law Journal* 150:1517; Svein Magnussen, Dag Erik Eilertsen, Karl Halvor Teigen and Ellen Wessel ‘The Probability of Guilt in Criminal Cases: Are People Aware of Being ‘Beyond Reasonable Doubt’? (2014) *Applied Cognitive Psychology* 28:196; Katrin Mueller-Johnson, Mandeep K. Dhami and Samantha Lundrigan ‘Effects of judicial instructions and juror characteristics on interpretations of beyond reasonable doubt’ (2018) *Psychology, Crime and Law* 24:2 [↑](#footnote-ref-69)
70. Rachel Ormston et al (n47) p32 [↑](#footnote-ref-70)
71. Martin Picton et al (n66) p5-1 [↑](#footnote-ref-71)
72. Dorothy K. Kagehiro and W. Clark Stanton ‘Legal vs Quantified Definitions of Standards of Proof’ (1985) *Law and Human Behaviour* 9:2; James Franklin, 'Case Comment - United States v. Copeland, 369 F. Supp. 2d 275: Quantification of the Proof beyond Reasonable Doubt Standard' (2006) *Law, Probability & Risk* 5:2 159; Jack B Weinstein & Ian Dewsbury ‘Comment on the Meaning of Proof beyond a Reasonable Doubt’ (2006) *Law, Probability & Risk* 5:2 167; Daniel, Pi, Francesco, Parisi and Barbara Luppi ‘Quantifying Reasonable Doubt’ (2020) *Rutgers University Law Review* 72:2. [↑](#footnote-ref-72)
73. See, for example, Jack B. Weinstein (n71) [↑](#footnote-ref-73)
74. Beyond Reasonable Doubt – University of Cambridge, Institute of Criminology <https://www.crim.cam.ac.uk/Research/research-projects/beyond-reasonable-doubt> [↑](#footnote-ref-74)
75. William Blackstone, *Commentaries on the Laws of England* (1765-1769); see also Daniel Pi et al. (n72) [↑](#footnote-ref-75)
76. See, for instance, Daniel Pi et al. (n72); Svein Magnussen et al. (n69); Katrin Mueller-Johnson et al. (n69); Dorothy Kagehiro et al. (n72). [↑](#footnote-ref-76)
77. Summarised in Daniel Kahneman *Thinking Fast and Slow* (Farrar, Straus and Giroux, 2011) [↑](#footnote-ref-77)
78. The authors are unaware if the comparison has been made for the framing of probability thresholds of reasonable doubt. However, one of the examples in Kahneman (n76) compares people’s intuitive understanding of the phrases ‘contains 5% fat’ versus ‘95% fat-free’. The latter statement is perceived as containing less fat than the former. By implication, ‘9% doubt’ might entail a higher degree of doubt than ‘91% certain’. [↑](#footnote-ref-78)
79. Rachel Ormston et al. (n47) p32. [↑](#footnote-ref-79)
80. Rachel Ormston et al. (n47) p32. The same observation was made by Ellison and Munro (n48). [↑](#footnote-ref-80)
81. See the research articles in (n72) [↑](#footnote-ref-81)
82. It is interesting to note that the barristers and legal professionals who have attended TJS are not in agreement about this either, though perhaps lean more towards not guilty verdicts than jurors without a legal background. [↑](#footnote-ref-82)
83. Again, this is in line with the mock jury studies of Ellison and Munro (n48). [↑](#footnote-ref-83)
84. Jonathan Haidt *The Righteous Mind: Why good people are divided by politics and religion* (Pantheon, 2012) [↑](#footnote-ref-84)
85. Craig John Newberry-Jones ‘Answering the call of duty: the phenomenology of justice in twenty-first-century video games’ (2015) *Law and Humanities* 9:1 78-102 [↑](#footnote-ref-85)
86. Lukas van den Berge ‘Sophocles’ Antigone and the Promise of Ethical Life: Tragic Ambiguity and the Pathologies of Reason’ (2017) *Law and Humanities* 11:2 205-227 [↑](#footnote-ref-86)
87. Ibid. [↑](#footnote-ref-87)
88. Ibid. [↑](#footnote-ref-88)
89. Julien Etxabe ‘Tragic Incommensurability and Legal Judgment’ (2011) *Canadian Journal of Law and Jurisprudence* 24:1 55-78 [↑](#footnote-ref-89)
90. See Ellison and Munro (n48) [↑](#footnote-ref-90)
91. Shai Danziger, Jonathan Levav, and Liora Avnaim-Pesso ‘Extraneous factors in judicial decisions’ *Proceedings of the National Academy of Sciences* (2011) 108:17 6889-6892 [↑](#footnote-ref-91)
92. David Gurnham ‘Victim-blame as a symptom of rape myth acceptance? Another look at how young people in England understand sexual consent.’ (2016) *Legal Studies* 36.2: 258-278. [↑](#footnote-ref-92)