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Deliberative Democracy and the American Civil Jury

*Valerie P. Hans, John Gastil, and Traci Feller**

Civil jury service should be a potent form of deliberative democracy, creating greater civic engagement. However, a 2010 seven-state study of jury service and voting records found no overall boost in civic engagement following service on civil juries, whereas jurors who served on criminal cases did show increased civic engagement following their jury service. This article reports a project that augments the civil jury data set with information about jury decision rule, jury size, defendant identity, and case type and examines whether specific types of civil jury service influence postservice voting. Taking into account preservice voting records, jurors who serve on a civil jury that is required to reach unanimity or a civil jury of 12 are significantly more likely to vote after their service. Jurors who decide cases with organizational, as opposed to individual, defendants likewise show a boost in voting behavior, as do jurors deciding contract or nonautomotive torts cases compared to automotive torts. Limitations and implications of these findings for deliberative democracy theory and jury practice are discussed.

I. INTRODUCTION

Recent research has celebrated the civic impact of criminal jury service (Gastil et al. 2008), but the same investigation found no comparable impact from civil trials. Though this could reflect a fundamental difference between the civic experience of civil and criminal service, there are strong reasons to believe the value of jury service transcends the nature of the criminal versus civil distinction.

In particular, the theory and practice of deliberative democracy suggests that considerable civic benefits should accrue from consequential experience of reasoned discussions among citizens about public concerns (Delli Carpini et al. 2004; Eveland et al. 2011; Jacobs et al. 2009). Such activity, which provides a stark counterpoint to more

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conventional—and often less reflective and egalitarian—political practices (Dryzek 2012; Fishkin 1991; Gastil 2008), can transform citizens’ attitudes, habits, and skills in a way that sparks greater participation in other domains of political life (Pincock 2012). If jury service is “akin to voting” (Amar 1995), that should be at least as true for the civil jury as for the criminal, since civil trials often have a starkly political dimension, such as when they concern an alleged civil rights violation or weigh punitive damages against a corporation that polluted public lands (Ferguson 2012; Hans 2000). Thus, some kinds of civil jury experience should inspire citizens to take greater advantage of their other civic opportunities, such as the chance to vote in future elections.

To explore that possibility, we undertook a secondary analysis of previously collected data on criminal and civil juries—the same data set that uncovered no overall civic jury service voting effect (Gastil et al. 2008). We brought to this reanalysis new codes based on case characteristics, the inclusion of previously unexamined trial features of decision rule and jury size, and a multilevel analysis that took into account individual, jury, and structural differences among juries within and between different jurisdictions. In doing so, we showed that beneath the absence of an aggregate civil jury effect lie conflicting findings that revealed when—and why—the civil trial does or does not cause a civic awakening among its jurors.

II. JURY SERVICE AND CIVIC ENGAGEMENT

A. Jury Service and Civic Engagement

Jury service should be a particularly potent form of deliberative democracy because it engages citizens in deliberation with one another to resolve important social and political disputes. As long ago as 1835, the French political theorist Alexis de Tocqueville had a similar insight. He wrote what has become a famous passage about the American jury’s role in educating citizens about self-government and the rule of law:

The jury, and more especially the civil jury, serves to communicate the spirit of the judges to the minds of all the citizens; and this spirit, with the habits which attend it, is the soundest preparation for free institutions. . . . It invests each citizen with a kind of magistracy; it makes them all feel the duties which they are bound to discharge toward society; and the part which they take in the Government. (Tocqueville [1835] 1961:336–37)

Tocqueville asserted that jury service enhanced jurors’ qualities as citizens. They were better informed about the rule of law, and they were more closely connected to the state. Thus, quite independently of what the jury contributed to dispute resolution, participation on the jury had salutary effects on the jurors themselves. Following Tocqueville, contemporary scholars have praised the civic engagement potential of the jury (Amar 1995; Diamond 1993; Dzur 2012; Fukurai & Krooth 2010; Vidmar & Hans 2007). In the U.S. Supreme Court jury selection decision *Powers v. Ohio* (1991), the justices approvingly quoted Tocqueville. The opinion went on to emphasize the nature of jury service as political participation:

Jury service preserves the democratic element of the law, as it guards the rights of the parties and insures continued acceptance of the laws by all of the people. . . . It “affords ordinary citizens a valuable opportunity to participate in a process of government, an experience fostering, one hopes, a respect for law. . . .” Indeed, with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process. (*Powers v. Ohio*, 499 U.S. 400, 407, 1991, internal citations omitted)

Until recently, these claims about the civic impact of jury service were largely untested. The first modern study was Paula Consolini’s (1992) doctoral research, which revealed that some jurors experienced boosts in political self-confidence along with considerable increases in knowledge about the judicial branch. Posttrial surveys of jurors also suggest that jury service influences attitudes toward the courts: the vast majority of jurors are very satisfied with their jury duty and come to hold more positive views about the courts (Diamond 1993; Gastil et al. 2010). These educational and attitudinal effects suggest that jury service has the potential to promote civic engagement.

John Gastil and his collaborators undertook a systematic test of the civic engagement effects of jury service in a substantial study examining jury service and voting rates (Gastil et al. 2002, 2008, 2010). An initial study in Thurston County, Washington, used pre- and postjury service voting records of approximately 800 residents who had served as jurors in criminal trials. Not surprisingly, a juror’s voting record before jury duty was a strong predictor of the juror’s voting record after jury duty; however, what happened during jury service also made a difference. Those who deliberated and reached a verdict—that is, had a conclusive experience—voted more frequently after their service, compared to those empanelled jurors whose trials were dismissed, who served as alternates, or were on hung juries that could not reach a verdict (Gastil et al. 2002). Consistent with prior research on deliberation’s potential for civic impact (Jacobs et al. 2009; Pincock 2012), the study found that a conclusive experience of deliberation provided a civic spark that manifested as an increase in voting rates even years after completing one’s service.

That same research team expanded its scope with a national study that collected jury service and voting records from additional counties across the United States (Gastil et al. 2008, 2010). They discovered that the experience of serving on a criminal jury increased voting, but only for certain groups of jurors. To avoid floor and ceiling effects, Gastil and his collaborators removed those jurors whose voting history showed that they never or always voted. In the analysis, they divided jurors into two groups (those who had voted infrequently vs. those who had voted regularly before their jury service) and then took into account whether those jurors deliberated or not. The results showed that jurors who had voted infrequently prior to their service were significantly more likely to vote after their service if they deliberated compared to jurors who did not deliberate (because they were alternates or because their trial was cut short by plea, mistrial, or some other reason). No effect was found for jurors who had voted on a regular basis in the past.¹

¹It bears noting that though such research established a causal link from jury service to voting, it could not reconstruct the baseline rates at which deliberating and nondeliberating jurors would have voted had they not appeared for jury service. Exogenous factors, including the act of voting itself (Gerber et al. 2003) influence voting turnout for jurors

Explaining the effect for deliberating jurors, the authors suggested that jury service may have civic engagement potential when jurors have conclusive, efficacious experiences. The researchers calculated that jurors who deliberated and reached verdicts increased their voting by 4 percent or more in subsequent elections, an increase comparable in size to a year in student government or enrollment in a civics class (Gastil et al. 2010:46).

However, in a key finding important to this article, the voting boost was *not* observed in civil cases (Gastil et al. 2010:45). Postservice voting rates for civil jurors who deliberated were comparable to empanelled civil jurors who did not have the chance to do so. Even when broken down by prior voting history, conclusive civil jury experiences did not produce an overall boost in voting. There is some irony in these civil juror results, since Tocqueville ([1835] 1961) singled out the civil jury for its deliberative potential. What is more, civil juries often have the opportunity to make crucial judgments that are political rather than criminal in nature, such as deciding whether a corporation has behaved negligently (Hans 2000) or determining damages in discrimination cases (Hans 2014).

B. Explaining Differences Between Criminal and Civil Jury Experiences

Our inquiry begins by reflecting on the reasons why criminal and civil jury service might engender different civic outcomes. Criminal trials may be more significant than civil trials to jurors who decide them because of their salience, accessibility, and intrinsically interesting subject matter. Criminal trials are regular fodder for the news media as well as popular television series and entertainment shows (Papke 2007). Because the criminal trial is familiar to them, jurors may feel more competent to decide the outcome of criminal cases. When people think about juries, they tend to recall the criminal jury because it is an important symbol of democracy and because criminal trials are far more common than civil trials (Vidmar & Hans 2007). Indeed, civil jurors sometimes employ criminal law language, calling a civil defendant “guilty” rather than liable for negligently causing injuries (Hans 2013:411). When citizens receive a jury summons, they likely expect to decide a criminal case in a group of 12 people who must decide unanimously. For such jurors, a civil trial would be a violation of their assumptions, and could be somewhat of a disappointment, resulting in a dampened civic impact.

What is more, the jury’s political role as the judge of government action may be more salient in a criminal trial. In *Duncan v. Louisiana*, the U.S. Supreme Court found that the right to a jury trial in state criminal cases was fundamental to the U.S. system of justice, noting the criminal jury’s key role in protecting individuals against arbitrary state power: “Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. . . . Fear of unchecked power . . . found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence” (1968:157). This political dimension may highlight for jurors that they are

and nonjurors alike, so all that can be said definitively is that jury deliberation heightens future voter turnout relative to the experience of nondeliberation.

part of the state apparatus of justice. Despite the fact that many citizens try to avoid jury duty, members of the public regard the criminal jury as a legitimate government institution (Hans 1993). A healthy 65 percent of Americans trust a jury more than a judge to determine the guilt or innocence of someone accused of criminal behavior (Rasmussen Reports 2012).

In contrast, the right to a civil jury has not been held to be such a fundamental right (Marder 2005:44; Schaffner 2001–2002). The U.S. Supreme Court has never held that the right to a civil jury trial (guaranteed by the Seventh Amendment) is binding on the states (through the Fourteenth Amendment), even though it has interpreted the Sixth Amendment's right to a criminal jury as a requirement all states must uphold. Although many jury scholars extol the political dimensions of the civil jury (e.g., Carrington 2003), some scholars dispute the importance of the civil jury's political role, pointing to the fact that civil juries mostly resolve disputes between individual parties instead of defendants charged by the state with wrongdoing (Priest 1990; Solomon 2012). A very substantial amount of the civil jurors' time is spent in deciding auto accident cases and assessing routine damages (Priest 1990:179). Solomon argued that deciding civil damages is a "poor way for members of a community to articulate their values and participate in government" (2012:1382).

Civil juror decisions are given less deference by the courts than criminal jury decisions. Trial judges have the ability to set aside decisions for either plaintiff or defendant, and they regularly adjust the damage awards decided by juries (Vidmar & Hans 2007). In contrast to the high regard given criminal juries, civil juries have been subject to sustained attacks and advertising campaigns by corporate, business, and insurance interests who question their competence to decide contemporary civil disputes (Daniels 1989; Robbenolt 2002; Sunstein et al. 1998; Vidmar & Hans 2007). Also, public opinion about the civil jury seems to be more negative (Gastil et al. 2010), perhaps influenced by these ad campaigns and other efforts (Hans 1993). In sum, the greater salience of the political quality of criminal adjudication, along with the apparently higher regard for the criminal jury among the public, may enhance the civic engagement potential of the criminal jury compared to the civil jury.

The nature of the civil jury's deliberative task may constitute the greatest difference between criminal and civil juries. Whereas the prototypical criminal jury has a binary decision that requires a judgment about guilt "beyond a reasonable doubt" on one or more charges, the civil jury must simply consider the "preponderance of evidence" and seek a sufficiently large majority to render a decision. Moreover, civil juries often end up negotiating between different points of view (Hans 2000), with possible verdicts ranging from, say, "no liability" to liability with a small damage award, to liability with a large award. The almost continuous scale of possible judgments permits the jury to bargain its way to a majority, rather than wrestling between guilt and innocence in search of unanimity. Negotiations typically differ from deliberations in their character (Mansbridge 2009), and this may substantially alter the civic experience of civil jury service. At a minimum, the fact that verdicts often require only a majority means that some jurors end up as *de facto* dissenters, which likely diminishes their satisfaction with the verdict—a variable that partially accounts for the jury's civic benefit (Gastil et al. 2010).

C. Important Structural Differences Among Civil Trials

The preceding discussion generalizes across civil juries, but the structural conditions of civil jury trials vary considerably across jurisdictions and trials, and those variations may hold the key to explaining differential civic engagement effects across civil juries. The fact that civil juries differ structurally across and within different states was not considered in the prior research by Gastil et al. (2008, 2010), so adding it to the analysis may reveal previously unseen civil jury effects.

In all but a handful of states, serious criminal cases are decided by juries composed of 12 citizens who must agree unanimously in the verdict. In contrast, states vary considerably in the size and decision rule required for civil juries (Bureau of Justice Statistics 2004:233–37, Table 42). For cost, efficiency, and other reasons, many states have reduced the size of civil juries and have replaced a rule that jurors decide unanimously with a majority decision rule. These structural differences raise questions about whether civil and criminal juries function as decision-making bodies in the same way. Research suggests that both the representativeness of the jury and the experience of the decision-making process are likely to differ as a function of size and decision rule.

The research on jury decision rules show that they have profound effects on the functioning of the jury (Devine 2012:44–46; Diamond et al. 2006; Hans 2001; Hastie et al. 1983). Juries deliberating under unanimity tend to discuss the case longer and to have more thorough and robust deliberations. In a realistic jury simulation study that varied the decision rule of the mock juries, unanimous decision rule juries brought up more facts, discussed important facts more thoroughly, corrected errors more frequently, and encouraged participation by jurors who held minority views (Hastie et al. 1983). Overall, jurors who participate under a unanimous decision rule express more satisfaction than do those who decide under majority decision rules, even though unanimous decision rule juries are more likely to hang (Hans et al. 2003). Juries seeking unanimity may also have more active participation by all jurors, and one's involvement in the deliberation can contribute to the eventual civic impact of such participation (Gastil et al. 2010; Pincock 2012).

A substantial body of research has examined the effects of jury size on the representativeness and functioning of the jury (for summaries, see Devine 2012; Saks & Marti 1997). Studies confirm that the representativeness of larger 12-person juries is superior; larger juries are better able to represent the wide range of viewpoints and perspectives in the community. In addition, larger juries deliberate longer and under some circumstances engage in higher quality deliberations (Devine 2012:41–44). On the other hand, participation among the jurors is more variable in larger than smaller juries. Exposure to a larger range of viewpoints and debating with diverse others might enhance the civic engagement effect in larger juries. Alternatively, if jurors do not participate much, and are lost in the crowd in a larger jury, the civic engagement potential of larger juries may be decreased.

In addition to these important structural differences, the parties differ between criminal and civil juries. Most juries in criminal cases convict, and a conviction aligns jurors with the state. In a criminal case, jurors hold the fate of an individual defendant, or at most a small number of defendants, in their hands. In many cases, their judgments have a profound impact on the lives of the defendants. The consequences of their decision for an

individual defendant may be obvious, compared to the consequences of their decision for business or corporate defendants in civil cases. Corporate law theorists have posited that it is easier to feel empathy for individuals than for a faceless corporation, and that empathy difference leads jurors to treat corporate defendants differently than individual defendants (Hans 2000). Although individual defendants may be easier to empathize with, when a juror judges the legal responsibility of large businesses and corporations, the political dimensions of the task become apparent.

D. Hypotheses

Drawing on insights from research on deliberative democracy and jury decision making, we hypothesize that different civil jury experiences—deciding under a majority versus a unanimous decision rule, deliberating in smaller versus larger juries, and determining the fate of individual parties versus organizational parties such as businesses and corporations—are likely to lead to different civic engagement effects. To be clear, all these predicted effects refer only to those individuals *placed on civil juries*—as opposed to everyone who answers the summons and arrives at a courthouse. In the present article, we take advantage of variation in civil jury structure and party type to examine whether civil jurors in diversely structured juries differ in terms of subsequent civic engagement. Comparing preservice and postservice voting records of civil jurors, we hypothesize the following.

First, we predict both a main effect for unanimity and an interaction effect with whether the juror had the chance to deliberate. Civil jurors deciding cases under a unanimous decision rule are likely to show a larger boost in civic engagement than civil juries deliberating under majority rules because unanimity forces more deliberation and more thorough deliberation. The effect should be strongest for those civil jurors who actually deliberate; however, we predict a main effect because even for nondeliberating jurors, the *anticipation* of interaction could prove important (Augustinova et al. 2005; Sommers 2006).

In a similar way, we predict both a main effect for jury size and an interaction effect with deliberative opportunity. To be sure, smaller groups are more intimate and may provide a more satisfying experience (Hare 1981), and larger bodies leave a reduced share of power for each member (Dahl & Tufte 1973). Even so, we anticipate that participation in larger juries will boost the civic engagement effect more than participation in smaller juries. The larger and more representative jury offers a more inclusive and dynamic public space, which is why those who design deliberative public events routinely rely on larger bodies of citizens, such as the 24-person citizens' jury process (Crosby & Nethercutt 2005). The 12-person jury, in particular, conforms to the aforementioned popular conception of the jury's appropriate size. The size effect should be greater for deliberating jurors, leading to a significant interaction with deliberation, but because there is exposure to diverse others during the trial, we also predict a positive main effect of jury size on civic engagement.

As for individual versus corporate defendants, the literature can justify predictions both ways. The likely greater empathy for individuals suggests that a case with only human parties may be more engaging and satisfying for jurors. After all, one of Gastil et al.'s (2010:200) findings was that compared to civil case jurors, criminal case jurors found their experience to be more engaging and more likely to have exceeded expectations. In

contrast, the presence of a business or a corporation in the case alerts jurors to the political nature of their role as community representatives. When a civil jury decides the fate of a business or corporation, the political nature of jury decision making is more prominent (Priest 1990; Solomon 2012). Though we are equivocal on the direction of its civic effect, we include this variable owing to its potential to shape jurors' experiences.

Finally, when a civil juror actually deliberates with others, civic engagement effects should be strongest. Gastil et al. (2008, 2010) used deliberation as a contrast, comparing jurors who experienced deliberation to those who did not. In this analysis of civil jurors, we predict that, after controlling for the other factors introduced in our study, deliberation will enhance jurors' civic engagement. As we noted above, however, it is likely that deliberation interacts with the structural variables of jury size and decision rule. These potential interactions were hidden in the previous Gastil et al. (2002, 2008, 2010) analyses of criminal juries because of the largely invariant 12-person unanimous nature of criminal jury decision making.

III. RESEARCH METHODS

A. Data Collection and Study Participants

This study employs data originally collected by Gastil et al. (2008, 2010). The original data set included both criminal and civil jurors, and we analyze only civil jurors. In addition, we coded additional case and jury characteristics that were not part of the original data set and were not previously analyzed. In particular, we categorized each case in terms of jury size, decision rule, whether the parties were exclusively individuals or included organizational parties such as businesses and corporations, and the case type (auto, nonauto tort, or contract).

The data set is best viewed as a demographically and politically diverse convenience sample of jurors serving in counties that varied in their legal systems and jury procedures. For the periods studied, it constitutes a complete census of juries in the selected counties, but the counties themselves and the sampling period are not random. Gastil et al. (2008) found it impossible for both technical and logistical reasons to collect jury service and voting data for a fully representative national random sample of jurors. Only some counties made available complete jury records that could be coupled with adequate voting histories. Moreover, Gastil et al. (2008) estimated that the collection of even their limited data required over 1,000 hours of work by researchers and court staff.

The portion of that data set we extracted included 522 different civil juries (each with a unique docket number) and 3,378 individual jurors. This included 195 jurors from Boulder County (Colorado), 252 from Cumberland and Swain Counties (North Carolina), 834 from Douglas County (Nebraska), 428 from El Paso County (Texas), 153 from Orleans Parish (Louisiana), 781 from Summit County (Ohio), and 735 from Thurston and King Counties (Washington).

The research team collected the original jury service and voting records by visiting each county for one week to enter juror names and trial characteristics into a database,

which was then merged with the official voter database using name-matching software (Gastil et al. 2008). Excluding criminal trials, this yielded a data set with 3,378 empanelled civil jurors with matching voter histories. Of the civil jurors in this data set, 2,875 served on juries that deliberated, 377 were dismissed for various other reasons (out-of-court settlement, case dismissed, mistrial, etc.), and 126 served only as alternates, never joining in jury deliberation. A data set this large was necessary both because of how we intended to subdivide the data and because the effect size being pursued was likely to be relatively small, with the jury-voting association yielding effect sizes of $b < 0.10$ in Gastil et al. (2002, 2008).

State courts differed in the information they collected about jurors, so we were unable to use individual characteristics without considerable data loss. That said, in the jurisdictions where these data were collected, 55 percent of the jurors were female, two-thirds were 41–65 years old (with 12.5 percent older than 65), and 52 percent were identified as non-Hispanic white (with 24 percent Hispanic and 20 percent black). Forty-five percent of the sample were registered Democrats, 29 percent were Republican, and 26 percent identified themselves as independent or with a third party.

B. Measures

1. Voting Rates

The dependent variable in our analyses is the change in voting rates for individual jurors before and after their period of service. Ninety percent of the jury trials selected for study began after March 18, 1996, and ended by June 14, 2004, with roughly two-thirds of trials (64.1 percent) commencing in 1997–2000. Voting rate was calculated based on all regular county-wide primaries, presidential primaries, and general elections; the number of times voting was divided by the number of opportunities to vote. Histories generally spanned from the 1994 primary to the 2004 general, with histories reaching back even further in North Carolina (1992) and Nebraska (1987). For our sample, the average turnout rate before jury service was 50.1 percent, and postservice turnout was 56.4 percent.

For the main analyses, the *change* in voting rate, rather than the postservice voting rate itself, was the chosen dependent measure. This departs from the approach taken in the Gastil et al. (2008, 2010) analyses, which used postservice voting rate as the dependent variable and preservice voting rate as the control. We opt to use the difference in voting rate because it yields a more normally distributed dependent variable.²

Preservice voting rate was used as a control in all regression models, for one's previous voting rate is a very strong predictor of future voting behavior (Gerber et al. 2003). In the full sample of civil jurors, pre- and postservice voting rates were significantly correlated ($r = 0.631$, $p < 0.0001$). As in the earlier analyses of these data (Gastil et al. 2008, 2010), jurors with no history of voting or a history of voting in every single election were removed to create a more normal distribution of both pre- and postservice voting rates and to reduce floor and ceiling effects. Jurors with no recorded votes in preservice elections can only increase their voting rate, and those with perfect records can only reduce it. Their

²A comparison of the two methods with these data yielded no marked differences in the results.

exclusion yields a dependent variable—change in voting rate—that can go up or down for every juror-voter in the data set.

2. Deliberated

We employed a simplification of the juror role distinctions made in Gastil et al. (2008, 2010) by differentiating those jurors who deliberated from all others. Hung juries were rare in the civil data set (only 23 jurors had that experience), and sample sizes for the various nondeliberating categories (alternate, mistrial for reasons other than failure to reach a verdict, case dismissed by judge, withdrawn claim, or out-of-court settlement) totaled only 16 percent of the sample ($N = 301$). Whereas the deliberation dichotomy constituted the principal focus in Gastil et al. (2008), in our study it counts as only one among many measures of the jury experience. This also allows us to explore the possibility that even nondeliberating jurors' experience might influence their postservice voting rates.

3. Jury Decision Rule

Table 1 shows the civil jury procedures for reaching verdicts across the states studied. Within each state, for decision rule, there was a clear default rule followed by a strong majority of its juries, and each state's juries were coded accordingly. The one case meriting a coding judgment was Nebraska, which requires juries to reach unanimous verdicts unless their deliberation exceeds six hours, at which point a five-sixths majority rule goes into effect. Because Nebraska, in effect, has a majority decision rule, we coded it as such.³ Such a procedure resembles the deliberative democratic model of a unitary spirit of discussion within a de facto majority rule situation (Cohen 1989), in that a five-sixth majority needs only time and patience to exercise its will over the one or two dissenting jurors. For the full sample, 13.2 percent of jurors used a unanimity decision rule, with the rest using variations on majority rule (from three-fourths to five-sixths).

4. Jury Size

Jurors also served on bodies of varied size, as detailed in Table 1. The challenge here was that states permit some variation in jury size, depending on the nature of the case, the level of court, and stipulations by the parties. Given the data-collection methods used by Gastil et al. (2008), it was not possible to account for stray jurors who might have left during trials, and some individual jurors may have been left out of the data set (i.e., if their name was illegible on court records). Nonetheless, using the number of jurors in the data set associated with each unique docket number (and spot-checked against the court records collected), we were able to make a distinction between full 12-person juries (49.1 percent of the sample) versus juries of various smaller sizes.

³A future study with a larger sample could distinguish fruitfully among a spectrum of decision rules, ranging from simple majority, up through ever-more-demanding supermajorities, to consensus. Given the nature of our sample, a binary split seemed more appropriate, and since Nebraska does not require unanimity, we coded it as majoritarian.

Table 1: Fixed Jury Size and Decision Rules for States from 1996–2004*

State	Jury Size		Jury Decision Rule			Coded in Data Set
	Standard Size	Details	% in Data Smaller than 12	Standard Rule	Details	
Colorado	6	Though parties may agree to 3–5	100	Unanimous	—	All unanimous
Louisiana	12	Or parties may stipulate 6	0	3/4 majority	Or 5/6 majority for smaller juries; for any jury, parties may stipulate different decision rule	All majority rule
North Carolina	12	Or parties may stipulate fewer	4	Unanimous	Or parties may stipulate a majority	All unanimous
Nebraska	12	Or fewer in courts inferior to the district court (e.g., 6 in county courts)	8	Unanimous reverts to 5/6 majority	Unanimity is required <i>unless no verdict after 6 hours of deliberation</i>	All majority rule
Ohio	8	Except 12 in an action for appropriation of right of way; also, size can be lower if the demand specifies a lower number and all parties agree	98.7	3/4 majority	—	All majority rule
Texas	12	Except with stipulation of parties, or 6 in lower courts	2.6	5/6 majority	Unless 3 jurors die or become indisposed, or if fewer than 6 remain at verdict	All majority rule
Washington	6	Or parties may demand 12, or consent to a lesser number (not less than 3)	90.7	5/6 majority	—	All majority rule

*Each state's jury size and decision rules correspond to the period of juror service in this study.

5. Organizational Defendant

Each case's records were coded to ascertain which involved organizations (e.g., businesses, agencies, nongovernmental organizations) as defendants. Given that this study constituted a secondary analysis of previously collected data, the court records originally collected by Gastil et al. (2008) were not always adequate to this coding task. Nonetheless, a majority of jurors (52.7 percent) served on cases that could be classified in these terms, with 55.6 percent sitting in the jury box during cases with exclusively individual defendants and 44.4 percent serving on cases that included one or more organizational defendants. The modal issue for individual defendants was an automotive incident, which accounted for 71.5 percent of such trials. When the defendant was an organization, these cases were mostly nonautomotive torts (40.1 percent) or contract disputes (37.2 percent).

Given the large amount of missing information for the variable, we checked to see if the distribution of unclassifiable cases was starkly different in terms of the type of claim. Overall, jurors predominantly served in automotive cases (38.2 percent), nonautomotive tort cases (36.4 percent), or contract cases (19.5 percent), with only 4.6 percent of cases falling into other categories or being unclassifiable. These data are very similar to the national data on state civil jury trials summarized by Cohen (2008:600, Table 1), with torts constituting 80.7 percent and contracts constituting 17.9 percent of all civil jury trials. Among those cases where the defendant's individual/organizational identity could not be established definitively, the figures were roughly comparable (27.9 percent, 46.4 percent, 18.4 percent, and 7.2 percent), with a larger portion of nonautomotive torts.

6. Claim Type

We also explored the efficacy of using civil claim type as an alternative variable to organizational defendant. Though claim type has less theoretical heft than does organizational defendant, some have argued that certain types of claims (e.g., automotive "fender benders") have no significant political or public content and may not even warrant a jury's deliberation (Priest 1990; Solomon 2012). Moreover, this variable had a very low rate of data loss (only 1.2 percent of jurors served on unclassifiable cases in this regard). Thus, in our results we include an alternative model that substitutes claim type for organizational defendant. Models including both variables (not shown) yielded no significant result for either one, probably because of their strong overlap.

7. Geographic Location

To take into account any further unmeasured variance in jury rules and experiences that varied between states, each juror was coded based on the state where he or she served. It is reasonable to expect that states will vary substantially in pre- to postservice voting rates, quite independent of the experience of jury service. We also explored breaking the data down by county, but there was only one state that had sufficiently large samples from two different counties (King and Thurston Counties, Washington).

Our theoretical interest is in the structural variables of jury size and jury decision rule. However, these two features of civil juries varied by the state (see Table 1). Decision

rule and jury size were not randomly associated across juries and across states; indeed, the state and jury structural variables overlapped substantially. In the ideal world, with jury service and voting records from all 50 states, we might be able to examine the separate effects of states and jury trial procedures simultaneously. However, in the real world, we were limited to the seven states in the existing data set. Thus we faced a major challenge in disentangling the general effects due to the state and the effects due to these two theoretical variables of jury size and decision rule.

We explored alternative models that directly incorporated the state as a fixed variable. However, the alternative models that included state fixed effects did not permit us to estimate the effects for one or more of the jury structure variables. In the end, we decided to include the two theoretical variables of interest and exclude the state variable in our main regression analyses. In other analyses, we did employ the state as a fixed factor along with ORGANIZATIONAL DEFENDANT and CLAIMS TYPE variables (excluding size and decision rule), and we describe those results below.

IV. RESULTS

A series of regression equations were estimated to build, step by step, a complete multilevel model of change in voting rate that took into account individual-level, jury-level, and state-level effects and interactions. All predictors except CASE TYPE were entered as continuous variables to aid in the interpretation of mean differences; results were the same when those variables were entered as fixed effects. All models controlled for the fact that jurors who sat on the same jury were not independent by including the state docket number as a control variable. Multicollinearity tests were also run and showed no violations of assumptions; the largest correlation among predictors was a modest $r = -0.18$ (between jury size and organizational defendant).

A. Hypothesis Tests

The first notable effect appears in the first model in Table 2, which shows the effect of individuals' prejury service voting rate on the *change* in their voting rates. The negative association reflects the fact that when one starts with a high voting frequency, any change that occurs is more likely than not to be small, or even negative in some cases. Likewise, those relatively infrequent voters are more likely to experience a larger and more consistently positive change over time, owing to the same tendency of regression toward the mean. The effect is not large, but it is significant and stable through each model.

Other individual-difference control variables, such as sex, ethnicity, age, and political party, were included in alternative models but yielded no substantial differences. What is more, they created nonrandom missing data problems between the states, which provided such information unevenly, so they are not included in any of the reported models.

Model 2 of Table 2 introduces the main predictors and tests many of our hypotheses. As was found in previous research using these same data (Gastil et al. 2008, 2010), deliberation had no direct overall effect on postservice voting rates among civil jurors. The nature of

Table 2: Estimates of Fixed Effects on Change in Individual Voting Rates After Civil Jury Service

<i>Level of Analysis/Independent Variable</i>	<i>Model 1: Juror Only</i>	<i>Model 2: Juror + Jury</i>	<i>Model 3: Jury Interactions</i>	<i>Model 4: Claim Types</i>
Intercept	0.168** (0.015)	0.146** (0.031)	-0.053 (0.091)	0.146** (0.032)
Level 1 (Individual)				
Voting rate before jury service	-0.264** (0.029)	-0.278** (0.029)	-0.281** (0.091)	-0.277** (0.029)
Level 2 (Jury)				
Served on jury that deliberated (no = 0, yes = 1)		0.000 (0.022)	0.207* (0.092)	0.000 (0.022)
One or more defendants was an organization (no = 0, yes = 1)		0.038** (0.013)	0.036** (0.013)	—
Unanimous jury decision rule (0 = majoritarian, 1 = unanimous)		0.052** (0.015)	0.220* (0.091)	0.049** (0.015)
Jury had 12 members (0 = 6–8, 1 = 12)		-0.001 (0.017)	0.200* (0.091)	-0.007 (0.017)
Deliberated × Unanimity (interaction term)			-0.212* (0.092)	—
Deliberated × 12-person (interaction term)			-0.172+ (0.092)	—
Case Type				
Contract (1) vs. Automotive (0)				0.036+ (0.019)
Other tort (1) vs. Automotive (0)				0.035* (0.014)
Covariance Parameters				
Residual	0.041 (0.002)	0.041 (0.002)	0.041 (0.002)	0.041 (0.002)
Docket number × State variance	0.041 (0.001)	0.001 (0.001)	0.001 (0.001)	0.001 (0.001)
-2 log likelihood	-338.7	-335.0	-334.0	-328.1

NOTE: Minimum $N=1,038$ with list-wise deletion for all variables employed in these models. In each model, the random intercept was the interaction of state by jury docket number. Two-tailed statistical significance levels are indicated by + $p < 0.10$, * $p < 0.05$, ** $p < 0.01$.

the defendant did make a difference: when jurors served on cases with organizational defendants, they had an experience that resulted in a more positive change in their voting rates ($b = 0.038$) than did those jurors whose cases featured only individual defendants. As predicted, the unanimous decision rule also tended to yield more positive change in juror voting rates ($b = 0.052$). The size of the jury had no significant direct overall effect.

Model 3 of Table 2 introduces the hypothesized interactions, whereby the influence of deliberation depends on the decision rule and size of a jury. The decision rule × deliberation interaction was significant ($b = -0.212$), and the jury size × deliberation interaction was nearly so ($b = -0.172$, $p = 0.062$). (An additional two-way interaction for organizational defendant was included in alternative models but never reached significance.)

The nature of both interactions was clear, as revealed by the estimated means in Table 3. The top half of that table shows that the effect of unanimity (vs. majority rule) on

Table 3: Pair-Wise Comparisons of Estimated Marginal Means (and Standard Deviations) for Key Comparisons in Multilevel Analyses of Change in Individual Voting Rates After Civil Jury Service

	<i>No Deliberation</i>	<i>Deliberation</i>	<i>Pair-Wise Significance of Column Comparisons (p)</i>
Majority rule	-0.071 (0.048)	0.032 (0.010)	0.035
Unanimity	0.149 (0.067)	0.080 (0.012)	0.308
Pair-Wise Significance of Row Comparisons (<i>p</i>)	0.016	0.002	
Fewer than 12 person	-0.061 (0.067)	0.061 (0.013)	0.074
12 person	0.139 (0.048)	0.051 (0.012)	0.068
Pair-Wise Significance of Row Comparisons (<i>p</i>)	0.029	0.528	

change in voting rate was significant for both deliberating and nondeliberating jurors. In both cases, the difference was significant, but the interaction term reflects a *net negative decline* in voting rate for one of the four conditions—those jurors who were assigned majority rule and *who did not deliberate*. In other words, jurors who were seated for a majority rule trial and only anticipated deliberation (or began but did not complete it) experienced an average decline in their voting rates ($M = -0.061$), whereas the voting rate increased in all other conditions. Also of note, that increase in voting rate was highest for unanimity rule juries that did not deliberate ($M = 0.149$). Recalling that the unanimity decision rule was given to fewer than one in six jurors, it is not surprising that, in the aggregate, the positive effects of unanimity-based civil jury service were not readily apparent in previous analyses of these data (e.g., Gastil et al. 2010).

The bottom half of Table 3 shows a strikingly similar pattern for jury size. On average, jurors in three of the four conditions experienced a net increase in their voter turnout rates. Recalling that the sample as a whole experienced an increase in turnout of roughly 0.06 (i.e., 6 percent), the only cell that clearly exceeds that rate was the 12-person nondeliberating jury ($M = 0.139$). Smaller juries that did not deliberate experienced an average drop in turnout rate of -0.061 , which yields the only significant difference in means for that table ($p = 0.029$). Once again, it is the nondeliberating juries that appear most responsive to the structural conditions of their service.⁴

⁴To satisfy the curiosity of those who wondered about the fate of jurors with no prior voting history, the same models shown in Table 2 were estimated for those individuals and yielded none of the associations shown therein. The only significant finding was a negative main effect for jury size ($b = -0.125$ [$SE = 0.04$], $p < 0.003$) in Model 2. As in Gastil et al. (2010), we do not wish to overinterpret such nonfindings or the anomalous result, given our uncertainty about voter histories that include long pre- or postservice periods of zero turnout, which could reflect voters' erratic registration or changes in residency as much as their actual voting frequency.

B. Analyses of Claim Types

Model 4 presents an alternative approach to thinking about different kinds of claims and defendants. In place of the organizational defendant, it substitutes a three-category variable that distinguishes between contract claims, automotive claims, and all other torts. The ORGANIZATIONAL DEFENDANT variable and the CLAIM TYPE variable overlapped considerably so they could not be included in the same analysis.

Using automotive cases as the comparison group, the analysis reveals two significant effects for claim type. Estimated means provide a clearer picture of these differences. Those who served on contract cases had an average voting rate change of 0.057 ($SD = 0.016$), which was comparable to that resulting for jurors on nonautomotive tort cases ($M = 0.056$, $SD = 0.011$). Those jurors hearing automotive claims, however, had a mean change in voting rate of 0.021 ($SD = 0.009$). Thus, the civic impact of jury service diminished for those serving on automotive cases. Otherwise, the main results in Model 4 are consistent with those in Model 2, which was the equivalent model except for the swapping out of ORGANIZATIONAL DEFENDANT for CLAIM TYPE.

The fact that organizational defendant cases and the types of claims varied considerably across the states allowed us to explore another set of models that examined their effects and state effects at the same time, but excluded the two state-level structural variables of jury decision rule and jury size. One model included ORGANIZATIONAL DEFENDANT; the other substituted CLAIM TYPE for ORGANIZATIONAL DEFENDANT. The juror's preservice voting rate and deliberation (whether the juror deliberated or not) were also included as potential predictor variables. These two models including state effects produced very much the same pattern of findings as Models 2 and 4 reported in Table 2. Preservice voting rate remained a strong predictor; whether the juror deliberated had no direct effect; and ORGANIZATIONAL DEFENDANT (in one model) and CLAIM TYPE (in the other) remained statistically significant predictors of voting rate change.

V. DISCUSSION

A. Summary of Findings

The preceding analyses yield four main findings. Most of all, civil juries *can* spark a civic awakening for jurors, depending on the context of the trial. The civic effect is more visible and positive when the defendants include at least one organization, as opposed to exclusively private individuals, though it could also be said that the effect fades when the case concerns an automotive claim. Civic effects are more potent for those civil juries that have a unanimity decision rule. When the jurors are empanelled but do not have the chance to deliberate, the civic effect can become negative if the jury would have used majority rule or included fewer than 12 persons. The divergent effects of different jury sizes and decision rules that we document here help to explain why Gastil et al.'s (2010) earlier analysis did not detect an overall effect of civil jury service on voting.

The features of the jury that appear to promote civic engagement can be understood as part of a single whole when seen through the eyes of a prospective juror. Those who show

up for jury service for the first time have set their expectations based on what they know of juries from other sources, particularly popular media (Papke 2007).

To get a glimpse of such representations, consider this attorney's speech to an empanelled jury on the television drama *Leverage*.⁵

A week ago you were all strangers. Then the same thing happened to all of you. You got that envelope . . . Says County of Los Angeles on the top. A week passes. You watch the witnesses parade through. You listen to the lawyers argue. Suddenly, you're not strangers anymore . . . But then the judge asks you to deliberate. . . . That envelope entrusted you with the most important obligation of citizenship—to find the truth. It's so important that we dare not give it to one person, but to twelve strangers. Now all I ask is that you go into that room and you work together. And you find the truth.

This brief speech touches on many of the findings reported here. The jurors move from strangers to comrades through their shared experience *even before the jury room deliberation begins*. The trial itself engages them; as they hear evidence and weigh the case, they experience a kind of "deliberation within" (Goodin & Niemeyer 2003). The task given to them by the judge is not to vote until reaching a majority but "to find the truth," an aspiration more consistent with the unitary model of democracy than the majoritarian one (Mansbridge 1983). The jury's task is "so important that we dare not give it to one person, but to twelve strangers," which underscores the critical mass of 12 persons hearing the evidence together. As for the nature of the defendant and claim, the lawsuit featured in this television episode concerned a wrongful death allegedly caused by a dangerous product, and it is hard to imagine such a speech coming during a low-stakes automotive negligence case. Though this counts as but one vignette drawn from popular culture, it captures the expectations that American culture sets for prospective jurors.

B. Limitations and Future Research

Examining the civic engagement impact of civil jury structural variables, organizational versus individual defendants, and claim types, we faced challenges in employing a database that included a modest number of states and incomplete coding of parties and individual difference variables. Most importantly, our models could not simultaneously explore the general impact of the state in which jurors served along with the size and decision rule the jurors experienced. As the structural variables were of theoretical interest, we chose to include them rather than particular states in our main regression analyses. That is an obvious limitation that only an expanded database including jury service and voting records in many more states would be able to address definitively. If there is limited variation within states, even a 50-state database might not be adequate to the task.

Even taking this limitation into account, the findings confirmed many of our a priori predictions about how characteristics of civil jury service might influence civic participation. What is more, supplementary analyses of the organizational defendant and claim type

⁵Season 1, Episode 11 ("The Juror No. 6 Job") first aired Feb. 10, 2009. Summary available online at <www.imdb.com/title/tt1300991>.

variables that included the state as a predictor confirmed the effects of defendant and claim type on civic engagement. Thus, we suggest that despite the evident limitations, as a first test of the civic impact potential of different jury structures, the findings offer much of interest to jury researchers and deliberative democracy scholars.

Future research could advance our understanding of the civil jury if it gathered an even larger and more diverse sample of juries. An ideal study would have large enough subsample sizes to permit more fine-grained distinctions among case types and among different classifications of defendants. Ideally, one would construct a sample that included within-state variations in jury structure (e.g., size and decision rule) within case type, but in common practice, when those features vary, they do so in relation to particular cases (e.g., requiring unanimity for the highest-stakes trials). One could also construct a sample that includes some states where judges stand for election (or retention) versus states where they do not. The latter variable could reveal a difference in the civic experience of jury service between those jurors whose judges are political actors versus those serving with judges less restricted by such pressures.

A more challenging study would also include survey data from jurors, as Gastil et al. (2010) did in the case of King County, Washington. Survey data could include information about jurors' prior experience of service, their preexisting attitudes toward civil juries (potentially influenced by jurors' political beliefs or party identification), and other potential moderators of the jury experience. That approach, however, would have to add tremendous explanatory value to justify its considerable expense and difficulty, presuming that one can even gain permission from the judges to collect such data—something only some courts have proven willing to do.

C. Implications

When conceptualizing the jury as a significant deliberative body, our research suggests that one must attend to the details of its features. When the jury becomes small, majoritarian, and focused on more individual claims with little public heft, it may cease to function in the way criminal juries and other deliberative bodies do. All civil juries have significant responsibilities, but only some take on the complex and demanding tasks that both democratic theorists and lay jurors expect from them. Empirical researchers have found the civic benefits of deliberation to be contingent on context (Delli Carpini et al. 2004; Pincock 2012), and the civil jury appears to be no exception to that rule.

More striking is the importance of structural features *particularly* in the case of nondeliberating juries. Gastil et al. (2002, 2008, 2010) placed the focus squarely on the deliberation room, which serves as the symbolic locale of the jury's principal deliberative task. The data here, however, underscore the significance of the pre-jury-room work that jurors do together, which is conditioned by the structural circumstances that shape their time together, even those conditions applying only when they go into the deliberation room. Past research has shown that people's anticipations of future interaction still have considerable consequence (e.g., Augustinova et al. 2005).

The effect of jury size shows that jurors receive a greater civic boost from socializing with a larger group during their period of service. Those unanimity effects for

nondeliberating juries are more intriguing because they suggest that jurors *imagine* their jury-room interaction in terms of its rules. Hickerson and Gastil (2008) found that most jurors experience strong emotions both during deliberation and during the trial, and it could be that jurors subject to majority rule experience a degree of anguish anticipating a divided or even polarized discussion, resulting in a divided jury. That, in turn, could turn people away from future political engagement in the same way that deliberative forums can, for adult learners, have a negative effect on one's sense of group efficacy (Gastil 2004). Such an interpretation is speculative, but it would account for the striking decline in voting rates for those empanelled on majority rule juries that do not have the chance to enter the jury room.

These findings offer one more reason why legal reformers must consider the broader effects of reducing the size of civil juries or lowering the bar for their decisions to majority rule. Low-stakes juries have been proposed as a means of revitalizing the civil jury (Institute for the Advancement of the American Legal System 2012). These "summary" or expedited civil juries could make juries more appealing and reverse the trend toward ever-fewer jury trials. But if they are not designed carefully, they could have the same features of those civil juries that yield no positive civic impact. Future research should investigate the experiences people have on these juries to better determine whether they can deliver on the civic educational promise first identified by Tocqueville ([1835] 1961).

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