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Juries in Italy: Legal and Extra-Legal Norms in Sentencing

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INTRODUCTION

To reach a verdict, jurors are required to evaluate the judicial case they are faced with according to the legal norms and precedents of a given country. Ideally, confronted with the same case and having the same norms as reference standards, all jurors should come to the same decision. This is not likely to happen, however, because judicial decision-making rarely consists of an automatic application of a given norm to a given case. More often, it is the outcome of a more complex reasoning process, implying a reconstruction of the judicial case and the attribution of meaning to relevant norms and precedents in order to assess whether the law has been broken or not. For example, let us consider the case of a man who has been charged with having raped a girl who accepted a lift in his car. Based on the available evidence, jurors must reconstruct the whole sequence of facts highlighting what may be relevant for the legal qualification of the case. At the same time, they must devise a clear representation of the meaning of "rape" according to the extant norms and precedents. The whole task may turn out to be rather complex and may be influenced (or even biased) by jurors' reference to extra-legal norms, rooted in their previous experiences, beliefs, or worldviews (see Devine, Clayton, Dunford, Seying, & Pryce, 2001 for a review).

Extra-legal norms may concern behaviors or events perceived by jurors as "normal," having frequently happened in the past and being likely to happen in the future (e.g., "Usually people do not go around naked"). Extra-legal norms may also concern behaviors or events perceived by jurors as "normative" (e.g., "People should not go around shouting at night"). As psychosocial research has clearly shown (see Thibaut & Kelley, 1959), "normal" behaviors often become "normative." In other words, what is perceived as frequent within a given society (a routine-based norm) is likely to be transformed into something that is perceived as right and proper for that society (a social norm). For example, a routine-based

norm such as “Usually women refuse lifts from strangers” may be easily transformed into the social norm “Women should refuse lifts from strangers.”

In everyday life, we often compare real events or behaviors with “normal” or “normative” ones. Such a comparison is usually automatic and serves several functions, such as organizing social information in a simple and economic way, explaining and evaluating the world around us, or planning our own behavior. Routine-based and social norms are very likely to be evoked also when jurors are confronted with judicial cases. Under given circumstances, the evocation of an extra-legal norm may be useful in the reconstruction of the judicial case. For example, faced with a case of a husband going out naked on the road after having beaten his wife, a juror might evoke the routine-based/social norm according to which *a person usually does not/should not go out naked on the road*, and might therefore focus attention on the defendant’s “abnormal” behavior. This focus might be useful in assessing the defendant’s state of mind when he committed the crime. However, the evocation of an extra-legal norm may also be an obstacle to the pronouncement of a fair verdict. It may lead a juror to focus attention on facts that deviate from the “normal” or “normative” in everyday life, but are irrelevant for the legal qualification of the episode, and should therefore not be taken into account. For example, the above-mentioned rape case might evoke the gender-related norm that women should refuse lifts from strangers, enhancing attention to the victim’s behavior, thereby reducing the responsibility attributed to the defendant (see Catellani, Alberici, & Milesi, 2004).

In this chapter, we examine how laypeople and professional judges refer to legal and extra-legal norms in reasoning about judicial cases, and we see how this may influence the final verdict. This is an especially crucial issue in a country, like Italy, where mixed juries are employed, that is, juries that are made up by both lay jurors and professional judges. First, we take into account the composition and functioning of mixed juries in Italy, highlighting a series of factors that contribute to create an imbalance in the role played in the jury by lay jurors and professional judges. Then, we examine how lay and professional judges may differ in referencing legal and extra-legal norms when reasoning about judicial cases. Such difference is especially highlighted by studies on counterfactual reasoning, a type of reasoning that consists of simulating alternatives to real events starting from the norms that are available to the person’s mind. For example, faced with the above-mentioned rape case, a juror might invoke the gender-related norm according to which women should not accept lifts from strangers, and this might lead the juror to generate the counterfactual “*If the woman hadn’t accepted the lift, she wouldn’t have been raped.*” In turn, this might influence the juror’s interpretation of the whole crime episode. Following on this, we offer suggestions on training that could enhance the quality of judicial decision-making in mixed juries.

ITALIAN MIXED JURIES

Unlike other criminal justice systems (e.g., the North American one), the Italian one does not include juries composed of laypeople only. On the contrary, in Italy,

lay jurors are always supported by professional judges. More specifically, Italian criminal juries are composed of six lay jurors and two professional judges, of whom one is the president of the trial and the other one is the so-called *a latere* judge. In the legislator's mind, the aim of such a mixed composition is to ensure common people's participation in the administration of justice and to fulfill the defendant's right to be judged by one's peers. Professional judges' technical judgments are meant to be integrated with lay jurors' common feelings and opinions, and such complementarity is expected to enhance the quality of jury decision-making (law 10 April 1951, no. 287; see Lanza, 1997).

Italian mixed juries pass judgment only for offenses that are deemed of major importance, either because of the severity of the punishment (at least 24 years' imprisonment or life sentence) or because they have been committed against the State. Some examples of the latter are: genocide, terrorist association, complicity and business with the enemy at the time of war, subversive association, and an attempt to take the life of the President of the Republic (article 5 of the criminal procedure code). Less serious offenses appear at magistrates' courts.

Procedures for the selection of lay jurors are quite complex. In each municipality, the mayor along with two assessors makes up two lists of all jury eligible residents: one for the jury of the first-degree trial and the other for the jury of the appeal. Jury eligible people are Italian citizens, in full possession of their civil and political rights, showing a "good moral conduct," aged between 30 and 65 years, and with at least a secondary school diploma for the first trial and a high school diploma for the appeal. Magistrates and officers employed in the administration of justice, members of the army and the police, and ministers of religion may not serve on a jury. The mayor sends the lists of all prospective jurors to the president of the law court. The lists are then shown in public places to allow for complaints about the omission or illegitimate inclusion of names; the president of the court revises the lists accordingly. Fifteen days before the first hearing of the trial, the president of the court, along with another magistrate and the prosecution, draws from each list 50 names in order to fill the jury panels for the next 2 years. Only people who claim legitimate and proven impediments to serve on the jury may be excused. For each court, the president draws at random the names of the six jurors who will compose the jury, and a number (usually two or three) of reserve jurors. This complex procedure aims at ensuring the absolute fairness of selection and at preventing any interference from outside.

Each court holds four sessions a year, each 3 months long. Thus, lay jurors serve on a jury for one session only. However, if the trial has not ended after 3 months, they keep serving on the jury until the end of the trial. Lay jurors who have served on a jury may not serve again for the following 2 years.

Before trial, lay jurors must swear that they will carry out their duty conscientiously, with awareness of the "supreme moral and civil importance" of their office, that they will listen carefully to both the prosecution and the defense, they will form an impartial opinion, without hostility or favor, and they will keep secrecy. In Italy, unlike the US, neither the prosecution nor the defense can challenge jury selection. A juror may be challenged and rejected only when he/she is shown

to have serious personal enmity against the defendant, or to have openly voiced an opinion about the case before trial.

In the courtroom, some outward signs distinguish lay jurors from professional judges. Lay jurors are invited to wear a dark suit and they are given a silk sash with the three-colored stripes of the Italian flag, which they wear knotted on their left side. Professional judges wear the black gown typical of magistrates, embellished with golden ornaments. Furthermore, at the hearings, the first judge to enter the courtroom is the president, immediately followed by the other professional judge, and finally by lay jurors. During the trial, lay jurors may not ask questions directly but only through the mediation of the president, who is the only one who asks questions to the witnesses and the parties.

While law regulates recruitment of lay jurors, article 527 of the code of criminal procedure only broadly describes jury deliberation. According to that article, the jury, under the lead of the president, makes the first and separate decision about preliminary issues regarding procedure. After that, the jury deliberates about the verdict (i.e., whether the defendant is guilty or not) and about the extent of the punishment and/or other legal measures to be applied. This procedure is very different from, for example, the US procedure, where lay jurors only decide the verdict, and consequent sanction is decided upon by the court magistrates. Article 527 of the Italian code of criminal procedure prescribes a precise order for jurors' voting. The first to vote must be lay jurors, starting with the youngest. After all the lay jurors have voted, the second judge votes, and then the President. This procedure for voting order clearly seeks to avoid undue influence by jurors with more expertise and/or personal influence.

Three different decision rules are to be distinguished: unanimity, actual majority, and fictitious majority. If there are two alternatives for the final sanction, the actual majority is computed (five against three, six against two, or seven against one). If there are more than two alternatives for the final sanction, article 527 prescribes a procedure aimed at reducing the number of alternatives to two. On the one hand, votes supporting the most severe sanction are combined with votes supporting the immediately less severe sanction; on the other, votes supporting the least severe sanction are combined with the immediately more severe sanction. The two resulting positions are compared and the rule of the actual majority is then applied. In the case of votes being evenly distributed (four against four), the rule of the so-called fictitious majority is applied instead, that is, the decision favoring the defendant prevails.

The law no. 287, 10 April 1951, establishes that professional judges and lay jurors must have the same function and decisional process regarding both determining facts and applying the law. However, the process of jury deliberation brings the seeds of power disparities between lay jurors and professional judges. As said above, the jury must decide on both preliminary and factual issues (article 527 of the criminal procedure code). This entails the possibility that differences between lay jurors and professional judges emerge from the very beginning of their interaction. This difference deals in the first place with the legal ignorance of lay jurors as compared with professional judges. For example, in a case in which the crucial piece of evidence that proves the defendant's guilt was collected in an illegitimate

way, professional judges are likely to object to its admissibility, while lay jurors lack specific juridical instruments to rebut the professional judges' objections.

The difference between lay jurors and professional judges has also to do with their mastery of judicial language. Professional judges are advised to simplify their technical language when they interact with lay jurors in order to overcome this difference (Lanza, 1997). This implies that juridical concepts will be translated into common ones and are inevitably delivered to lay jurors through the mediation of professional judges. Thus, there is the risk that the frame of reference of professional judges will be the only working frame within the jury, enhancing further the already powerful position of professional judges in Italian criminal juries.

A further asymmetry comes in when article 527 prescribes that the president, who is always a professional judge, must direct the discussion within the deliberation room. The president usually tries to avoid contrasts among jurors and aims at reaching a verdict by unanimous consensus (Lanza, 1997). Given the clear "superiority" of the president, this is likely to be quite an easy task. Thus, inconsistent with the original aim of combining juridical technicality with common people's feelings, actual procedures for deliberating in criminal juries give much weight to professional judges, above all the president.

The Italian jury system also employs a mixed jury in the juvenile courts. Italian juvenile mixed juries are composed of two professional judges and two "honorary judges," that is, professionals who are competent in juvenile deviance (i.e., psychologists, sociologists, and social workers). Honorary judges are not selected at random but they are chosen among professionals of the relevant domains. They serve on the court for 3 years and can be reappointed in their office. Thus, in juvenile courts, professional and honorary judges interact with each other for quite a long period. This is likely to make their respective reasoning more similar and decision-making processes smoother than the ones observed in criminal mixed juries (Lanza, 1994).

COUNTERFACTUALS IN THE JUDICIAL CONTEXT: CONTRASTING REALITY WITH ITS ALTERNATIVES

To come to a common decision regarding a judicial case, a jury must agree on those legal and extra-legal norms that are relevant to the case and should be referenced in the decision. This is a difficult task, however, because different jurors may (spontaneously or deliberately) evoke different norms. The task may become even more difficult in a mixed jury, where jurors' different familiarity with the justice system may favor differential reference to norms. Evidence of how lay jurors and professional judges refer to norms when reasoning about a judicial case may be found in studies on counterfactual reasoning in the judicial context.

As mentioned in the introduction, counterfactual reasoning involves comparing a real event with one or more hypothetical events in which the mutation of an antecedent (*"If the woman hadn't accepted the lift..."*) determines the mutation

of the consequence (“...*she wouldn't have been raped*”). Recourse to counterfactual reasoning is recommended in criminal and civil codes in order to establish whether a defendant's conduct caused a negative outcome and consequently to evaluate the defendant's responsibility in the event. In all legal systems, the assessment of a causal link between the defendant's conduct and the negative outcome is a crucial issue. Most explicitly, the Italian criminal code establishes that “nobody can be punished for a fact that is considered a crime by law, if the damage or the danger, upon which the existence of the crime depends, is not a consequence of his/her action or omission. Not preventing an event that one is obliged to prevent is equal to causing it” (article 40). By a cause is meant each antecedent *without* which the event itself would not have occurred. In Italian legal literature, the use of counterfactual reasoning is strongly implicated under the so-called double formula: (1) an action is a necessary condition of the event if, once that action is mentally canceled from the number of occurred facts, the event would not have happened; and (2) an action is *not* a necessary condition of the event if, once it is mentally canceled from the number of occurred facts, the event would have happened all the same. The defendant's conduct is likely to be deemed causal when it represents a necessary condition that, among others, has concurred to produce the event (Cadoppi, 1999; Stella, 2003). Therefore, according to code prescriptions, counterfactual reasoning should be focused on the defendant's conduct and should be used to evaluate whether this conduct was a necessary condition for the negative outcome to occur. Consequently, the social psychological study of counterfactual reasoning is quite relevant to understanding the core implication of this code.

Professional judges are much more likely to be familiar with the above recommendations than lay jurors. As a matter of fact, counterfactual research has shown that jurors may use counterfactual reasoning in an implicit and uncontrolled way, which may be inconsistent with the one prescribed by codes of legal procedure. As an example, we may take into account a study by Bothwell and Duhon (1994) in which mock jurors were asked to generate counterfactuals regarding the case of the owner of a golf course tried for the death of a golfer who had been struck by lightning. Some of them thought that the accident would not have occurred if the golf course had had a better warning system. Many of them, however, were more inclined to think that the accident would not have occurred if the golfer had been more careful and had sought shelter in the clubhouse. This means that some jurors generated counterfactuals about the event according to legal prescriptions about warning and safety systems in golf courses, while others generated counterfactuals according to the imagined behavior of other golfers under the same circumstances. The behavior of the second group of jurors differs from the one suggested by the above-mentioned Italian code of criminal procedure in two respects. First, their counterfactuals focused on the victim (i.e., the golfer) rather than the defendant (i.e., the owner of the golf club). Second, their counterfactuals focused on preventive behavior not enacted (i.e., “*If the golfer had gone to the clubhouse, things would have been different*”) rather than negating a necessary event that did in fact occur (i.e., “*If the golf course hadn't had a bad warning system, things would have been different*”), as judicially prescribed (see the Judgment Dissociation Theory, Mandel, 2003; see also Mandel &

Lehman, 1996). One might wonder whether professional judges would have generated counterfactuals more in line with code prescriptions and whether these counterfactuals would have prevailed over the ones of lay jurors in a mixed jury.

Thus, spontaneous counterfactual reasoning may surreptitiously provoke a change in the locus and definition of causality. Focusing on the conduct of actors other than the defendant as potential preventors of the negative outcome may lead the jurors not to consider (or consider to a lesser extent) whether the defendant's conduct was a necessary cause for the negative outcome to occur. This may have relevant consequences on responsibility evaluation, and the correspondent definition of sanction and compensation. For example, in Bothwell and Duhon's study mock jurors who focused on the victim awarded the plaintiffs (relatives of the deceased) lower compensation than mock jurors who focused on the defendant in their counterfactuals (see also Wells & Gavanski, 1989). Similarly, in rape cases counterfactuals focused on the victim's preventive behavior (e.g., "*If the victim had cried for help, things would have been different*") increase the blame assigned to the victim and decrease the blame assigned to the assailant (Branscombe, Owen, Gartska, & Coleman, 1996; see also Nario-Redmond & Branscombe, 1996). Studies in a judicial context have indeed observed that the amount of blame assigned to an actor is linked to the counterfactuals focused on that actor, and in turn, defendant punishment and victim compensation are established accordingly (inter alia rape and car accident cases, Branscombe et al., 1996; Nario-Redmond & Branscombe, 1996; burglary cases, Branscombe, Crosby, & Weir, 1993; negligence cases, Wiener, Gaborit, Pritchard, & McDonough, 1994). Understanding what counterfactuals may be more available to the juror's mind, that is, more likely to be spontaneously generated, is therefore of special relevance.

According to the Norm Theory (Kahneman & Miller, 1986), hypothetical events that are consistent with norms are most likely to come to the person's mind at that very moment. Much research has focused on people's reference to routine-based norms (see above) in the generation of counterfactuals. It has been shown that when people are faced with an actor's behavior that is unusual or exceptional for that actor, they are likely to generate counterfactuals in which the actor's behavior is set against its norm (the routine behavior). Consequently, counterfactuals are more likely to focus on exceptional rather than routine behaviors (*exceptional-routine effect*, inter alia Klauer, Jacobsen, & Migulla, 1995; Wells, Taylor, & Turtle, 1987). Several studies carried out in a judicial context have shown that the exceptional-routine effect may have relevant, though paradoxical, consequences in the evaluation of a judicial case. An example may be found in a study by Miller and McFarland (1986). A man who was shot on a robbery occurring in a convenience store and lost the use of his right arm was awarded higher compensation by mock jurors who were told that he rarely shopped at that convenience store than by mock jurors who were told that he was a regular customer. Sanction of the perpetrator follows a complementary pattern. In the case of a man who was mugged while walking home, Macrae, Milne, and Griffiths (1993, Study 2) found that participants recommended harsher punishment for the perpetrator, rated the crime as more serious, and felt greater sympathy for the victim when the incident was preceded by exceptional circumstances (i.e., the victim had taken a

new route home) than by routine circumstances (i.e., the victim had taken his regular route home). Similar results were reported for a rape charge in which the victim was attacked in a routine (library) compared to unusual (deserted alleyway) setting, though results interacted with the identification of mock jurors with the victim or perpetrator (Kaplan & Miller, 1978).

Perceived normality of a given behavior involves more than simply its usualness. Perceived normality of an actor's behavior may also deal with the conformity versus nonconformity of the behavior to a social norm inherent in the event's context or to the social category to which the actor belongs. For example, let us consider the case of a woman who usually goes to work by train but decides to go by car for a change. Her car has a breakdown and she accepts a lift from a male stranger who afterwards rapes her. Consistent with the exceptionality effect, a juror should be likely to compare the victim's behavior with her routine behavior (i.e., "*If only she had taken the train, things might have been different*"). However, a juror might also compare the victim's behavior with the perceived standard behavior of a (nonraped) woman, which implies not accepting a lift from a stranger (i.e., "*If only she had not accepted a lift from a stranger, things might have been different*"). In this second case, a behavior that does not conform to a relevant social norm is perceived as "abnormal" and is contrasted with the "normal" behavior that does conform to that norm. Besides the above-mentioned exceptionality effect, a *nonconformity effect* (Catellani et al., 2004; Catellani & Milesi, 2005) may therefore be envisaged, according to which behaviors that do not conform to a social norm may be especially likely to be counterfactually mutated. This is likely to be the case especially for jurors who are characterized by a high endorsement of the relevant social norm.

We will now consider three categories of social norms that have been shown to influence jurors' judgment. Some social norms are rather specific. This is the case for *stereotype-based norms*, related to specific social categories or specific contexts. Other social norms are instead more general. This is the case for *culture-based norms* or *ideology-based norms*, which often apply to different social categories and/or different contexts. In any case, the degree of endorsement of a given social norm (be it specific or general) may vary from a person to another. Therefore, there will be a range of variation in the likelihood of a juror referring to a given social norm in evaluating a judicial case. In examining this issue, we will now focus our attention on how reference to social norms becomes part of the reasoning process that *precedes* jurors' verdict. In particular, we will show how norm evocation may lead jurors to the generation of "normal" counterfactuals, thus influencing their evaluation of the case at hand.

The likelihood of jurors referring to these extra-legal norms while reasoning upon a case depends not only on how much they endorse them, but also on the degree of control jurors are able to exert over their reasoning process. A controlled (instead of automatic) use of counterfactual reasoning may improve the quality of the juror's decision, by reducing reference to legally nonrelevant norms. We will see that such controlled use of counterfactual reasoning is observed in professional judges more than in lay judges.

REFERENCE TO STEREOTYPE-BASED NORMS

When jurors are confronted with a criminal case, they are likely to compare it with a *crime script* including the actors and the events that characterize the “normal” occurrence of that kind of crime (Finkel & Groscup, 1997; Krahè, 1991; Wiener, Richmond, Seib, Rauch, & Hackney, 2002). According to this perspective, the script of a given crime provides jurors with a standard for evaluating a specific judicial case. Although both professional judges and lay jurors are likely to compare the case at hand to its correspondent script, research data collected so far are mainly focused on lay jurors and cannot be extended to professional judges until pertinent studies have been carried out.

Lay jurors seem to be more likely to convict when the facts closely match with their script for the crime. On the contrary, they become more cautious when the case under evaluation contains features that deviate from the script (Howard, 1984; Krahè, 1991; Smith, 1991, 1993; Smith & Studebaker, 1996). For example, a woman who deviates from the profile of the typical victim in a rape case simply by working in a nontraditional occupation (e.g., a gas station attendant working at night) is more likely to be blamed for being raped as compared to a woman who works in a traditional occupation (Acock & Ireland, 1983). Consistently, responsibility attributed to the rapist may be lower. Similarly, mock jurors are less confident that a rape defendant is guilty, and they recommend a less severe sentence, when the victim’s behavior deviates from the behavior expected from a woman who is involved in a rape, for example when the victim resisted too much or too little compared to the level of resistance implied by the rape script (Branscombe & Weir, 1992), or when the victim was in a situation not likely to invoke thoughts of rape (Kaplan & Miller, 1978). The evocation of a crime script depends on how knowledge is organized in the jurors’ mind, but also on how the judicial case is labeled by the prosecution or the defense during the trial. For example, a homicide occurring during a bar fight may be labeled as manslaughter or an intentional murder, and a different script may therefore be evoked in the juror’s mind.

Scripts regarding certain crimes may include expectancies regarding the identity of typical perpetrators. For example, Blacks are perceived as the typical defendants for a car theft (Jones & Kaplan, 2003; see also Gordon, 1990), while drug addicts are perceived as typical defendants for burglary (van Knippenberg, Dijksterhuis, & Vermeulen, 1999). Typical perpetrators of crimes often belong to stereotyped social categories. Accordingly, social psychological research has demonstrated the relevant effects of stereotypes, mainly ethnic stereotypes, on lay jurors’ judgments. Creditable explanations for the stereotype effect assume that stereotypes work as a judgmental heuristic. They simplify case information processing by increasing the amount of attention focused on stereotyped case protagonists (inter alia Bodenhausen, 1988; Gordon & Anderson, 1995; Jones & Kaplan, 2003; van Knippenberg et al., 1999). Thus, when the defendant belongs to a stereotyped social category, crime explanations are very likely to focus on the defendant’s stereotypic characteristics, that is, on internal factors rather than on external, situational ones. This kind of focus makes judgments more severe, and

this means that a Black defendant will probably be judged more severely than a White defendant for certain racial-stereotypical crimes.

A demonstration of the role played by stereotypes in lay jurors' reasoning comes from research showing that jurors with different endorsement of given stereotypes tend to generate different counterfactuals on the same judicial case. For example, many well-established stereotype-based norms describe the appropriate behavior for women in order to avoid rape. According to such norms, a woman should not engage in a host of risky behaviors, such as accepting lifts from strangers (Acock & Ireland, 1983), walking late at night (Pallak & Davies, 1982), or drinking on her own in a pub (Krahè, 1988). At the same time, a woman is expected to assume a number of preventive behaviors, such as trying to escape and opposing appropriate dissent and resistance (e.g., saying "no" to unwanted advances and fighting back, Howard, 1984). In two studies, Catellani et al. (2004) presented Italian mock jurors with a rape report in which the victim's behaviors were balanced as regards their conformity versus nonconformity to stereotype-based norms. For example, it was stated that the victim "*got frightened when the man took off the gun and laid it aside*" (conforming behavior), but also that the victim "*was pleasant with the man*" (nonconforming behavior). The victim's behaviors were also balanced as regards their being actions (e.g., "*she talked freely to the man*") or inactions (e.g., "*she did not cry out for help*"). After reading the report, participants were asked to complete counterfactual stems starting with "*The outcome might have been better, if only ...*" Participants' endorsement of the rape victim stereotype was also measured, using a scale developed by Lonsway and Fitzgerald (1995). Results of both studies confirmed the presence of a nonconformity effect in counterfactual reasoning; jurors with higher endorsement of the rape victim stereotype were especially inclined to focus counterfactuals on the victim's nonconforming behaviors. The effect was greatest with respect to the victim's nonconforming *inactions*, with those highest in rape stereotyping focusing on what the victim could have done (but did not) to prevent the crime from occurring, and generating counterfactuals like "... *if only she had cried out for help*" or "... *if only she had said 'no' more strongly*." Their accent on the victim's inactions shows that the nonconformity effect may be so strong that they overcome the more general tendency observed in past research to focus counterfactuals on actions more than on inactions (*action-inaction effect*; inter alia Catellani & Milesi, 2001; Kahneman & Miller, 1986).

In another study (Catellani & Milesi, 2004), mock jurors were presented with the report of a rape case in which counterfactuals based on the victim's nonconforming behaviors were implicitly conveyed through linguistic indicators like *even* or *without*. For example, a sentence like "*She accepted the kiss without any resistance*" implicitly hints at the counterfactual hypothesis that "*If she had put up some resistance, things might have ended differently*." Half of the participants were told that the report had been made by the police, while the other half were told that the report had been made by the defendant. As in the previous study, participants were asked to generate counterfactuals regarding the case and to evaluate both the defendant's and the victim's responsibility. Participants' endorsement of the rape victim stereotype was also measured. Results showed

that when stereotype-consistent counterfactuals are implicitly suggested by the defendant, that is, by a supposedly unreliable source, all participants are less inclined to reproduce the same counterfactuals in their own reconstruction of the facts. Interestingly, however, in the same condition those high in stereotyping are especially inclined to generate "original" counterfactuals, that is, counterfactuals that are still consistent with the rape victim stereotype but that were not suggested by the defendant. This result suggests that being exposed to stereotype-consistent counterfactuals by a source that is likely to be unreliable may have created a situation of cognitive dissonance in participants with higher stereotype endorsement. They find themselves in the position of endorsing stereotypic beliefs that are also endorsed by an unreliable source. In order to overcome cognitive dissonance, highly stereotyped persons avoid reproducing counterfactuals suggested by a suspected source, but at the same time engage in a systematic cognitive activity that leads them to generate further stereotype-consistent counterfactuals. Thus, the tendency to stick to one's own stereotypes may be so strong that a challenge to them may paradoxically end up with an increase, rather than a reduction, of counterfactual thoughts supporting these stereotypes.

As with research on crime scripts, research on stereotype reference in judicial reasoning should be usefully extended to professional judges. This would assess whether stereotypes influence professional judges' reasoning similarly to lay jurors' reasoning, or whether such influence is moderated by the higher control professional judges exert over their reasoning processes (see paragraph on jurors' expertise below).

REFERENCE TO CULTURE-BASED NORMS

Social norms may vary a great deal from one society, or culture, to the other. As an example, we may go back to the host of stereotyped expectancies regarding a rape victim (see above). These expectancies are related to other, more general, expectancies regarding "proper" behaviors of men and women in sexual interactions and dating relationships. These behaviors are well rooted in and specific of each culture, so that behaviors that are considered neutral in one culture may have sexual implications in another. For example, in Asian and Arab cultures if a woman smiles at a man to whom she has not been introduced, the smile is considered sexual; on the contrary, in many western cultures this is considered just a friendly behavior (Barna, 1985). Consistently, the rape victim stereotype is also likely to vary from one culture to another. Confirmation has been found in a study by Milesi and Alberici (2001), investigating differences in the rape scripts of Italian and Moroccan people. Italians focus their attention on the rape victim's behavior during the interaction with the assailant more than on her status (e.g., not being married or living alone). They expect her to evidence strong physical resistance, to try strongly to dissuade the assailant from his violence, and to make repeated attempts to escape. These results are consistent with previous findings in studies carried out in western cultures, stressing the relevance of the resistance

offered by the victim for the evaluation of responsibility of both the victim and the assailant in rape cases (see above Branscombe & Weir, 1992; see also Estrich, 1987; Krahè, 1991). Unlike Italians, Moroccans focus their attention on the victim's status more than on the victim's actions aimed at avoiding rape, consistent with gender role prescriptions in traditional Moroccan culture, which assign women a passive role in social interactions. Cross-cultural differences in the rape script are likely to lead to different evaluations of rape cases (see also Heaven, Connors, & Pretorius, 1998). As already mentioned, jurors are less likely to convict the defendant and more likely to distrust the victim's allegations of rape, if the rape case departs from the commonly accepted script of the "typical rape" situation. Thus, if one considers the cross-cultural differences described above, the Italian jurors are likely to be more lenient if the victim did not adequately resist the assailant, whereas the same may not be true for Moroccans.

A further cultural source of variation in jurors' reasoning and judgment has to do with the individualism–collectivism dimension, although empirical data in this regard are still missing. Individualist cultures stress the priority of individual needs over group needs, prefer loosely knit social relationships, and value self-discipline, self-sufficiency, personal accountability, and autonomy. On the contrary, collectivist cultures stress the priority of group over individual needs, prefer tightly knit social relationships, value conformity, and integration within the group (inter alia Triandis, 1989; Markus & Kitayama, 1991). Jurors belonging to individualist versus collectivist cultures are likely to evoke different norms when they interpret and evaluate judicial cases. For example, research on attribution processes has shown that collectivists are more attentive to how situational factors may influence actors' behavior than individualists are (Choi & Nisbett, 1998; Miller, 1984). It is hence conceivable that a collectivist juror might be much more likely to wonder whether things might have been different if the actor had been in a different situation than an individualist juror would. In turn, this might influence the juror's decision.

The examination of cross-cultural differences among jurors surely deserves further attention, as society is becoming more and more ethnically differentiated, and juries are therefore more and more likely to be a mix of different cultures.

REFERENCE TO IDEOLOGY-BASED NORMS

Ideological orientation is a further source of reference norms that may be available to a juror's mind when evaluating a judicial case. In the present context, by ideological orientation we mean a set of organized general attitudes toward crime and principles of justice.

Many studies have investigated the relationship between lay jurors' authoritarianism and dogmatism on the one hand, and jury verdicts on the other (see Devine et al., 2001 for a review). There is strong evidence for the existence of a relationship between the number of authoritarian/dogmatic jurors in a jury and jury decisions. Juries containing a high proportion of authoritarian/dogmatic jurors tend to convict more often and inflict harsher sentences than juries with a

low proportion of such individuals. However, high authoritarians are less punitive than low authoritarians when the defendant is a person in authority (Mitchell, 1973), or when the crime is the consequence of obedience to or the exercise of authority (García & Griffitt, 1978; Hamilton, 1976).

A number of studies have focused on how professional judges' ideological orientation may influence the verdict and the subsequent sanction (Carroll, Perkowitz, Lurigio, & Weaver, 1987; Giner-Sorolla, Chaiken, & Lutz, 2002; Tetlock, Bernzweig, & Gallant, 1985). In another study (Catellani & Milesi, 2006), we investigated how the criminal philosophy of professional judges and honorary judges in Italian juvenile mixed juries (see description above) may influence their judicial reasoning and their imposed sanction. In 1988, the Italian juvenile criminal code was reformed to favor the promotion and rehabilitation of minors involved in criminal episodes. More punitive legal positions were abandoned, and a variety of alternatives to imprisonment were made available in order to support the reintegration of deviant minors into society. These alternatives include detention centers, home confinement, and community service. Their implementation is closely dependent on the intervention of social services. Our study involved professional judges and honorary judges (psychologists, sociologists, and criminologists) enrolled in various Italian juvenile courts (see the chapter on German courts for a full discussion of this type of jury composition in juvenile courts). We investigated whether counterfactual thinking and the final verdict would vary as a function of the judges' area of expertise and their endorsement of the promotion-oriented philosophy underlying the reformed juvenile code. Judges were presented with a report of an armed robbery perpetrated by a minor and were invited to complete open-ended counterfactual stems, starting with *"The outcome might have been different, if only ..."* They were then asked to rate their agreement with two different sanctions: imprisonment and detention center. Finally, their endorsement of the promotion-oriented philosophy was assessed, through rating the relevance attributed to three articles of the juvenile criminal code stressing juveniles' promotion. Results showed significant differences between judges largely due to their promotion-oriented philosophy, and only secondarily to their area of expertise. Compared with lower promotion-oriented judges, higher promotion-oriented judges generated a significantly higher number of counterfactuals, and were more inclined to focus part of these counterfactuals on actors other than the deviant minor, especially social services (e.g., *"The outcome might have been better, if only territorial social services had taken charge of the defendant's family"* or *"... if only social services had intervened in advance, considering that the defendant's brother had been already involved in illegal activities"*). In addition, higher promotion-oriented judges were generally more favorable to detention centers than imprisonment, while lower promotion-oriented judges favored detention centers only when they thought that the juvenile defendant would be unlikely to commit further crimes.

Interestingly, in the Catellani and Milesi (2006) study, no significant difference as a function of the judges' area of expertise was observed. In fact, one might have expected professional judges to be more oriented toward prevention and honorary judges to be more oriented toward promotion. It should be noted,

however, that professional and honorary judges have been cooperating in Italian juvenile courts for many years now. Such cooperation is likely to have softened differences owing to the area of expertise and led to the creation of a common frame of mind, having a positive influence on the working of the juvenile criminal system (Lanza, 1994).

JURORS' EPISTEMOLOGICAL APPROACH

Jurors' reference to extra-legal norms in judicial reasoning is likely to depend not only on the mental availability of these norms, but also on the degree of sophistication of their reasoning. Weinstock and Flaton (2004) investigated how epistemological orientation may influence lay jurors' reasoning and, consequently, judgment. Participants serving jury duty heard reenactments of two murder cases and were asked a number of open questions regarding their verdict, how they justified it, and how certain they were of it. They were also presented with alternative verdicts (i.e., verdicts they did not pronounce) and asked to explain why they did not choose them. Analyses of jurors' accounts showed that the relationship between the amount of evidence used and certainty regarding verdict is not direct. Jurors who claim to be *fairly* certain use more evidence than those who claim to be *absolutely* certain. A different epistemological approach is likely to characterize these two groups of jurors, and the difference concerns the degree of certainty one requires in order to state something.

According to Weinstock and Flaton (2004), absolutely certain jurors become certain quite early and consequently they stop seeking evidence rather soon. In turn, such a limited search for evidence leads to a limited consideration of plausible alternatives, thus further increasing these jurors' certainty in the chosen explanation (see the notion of "need for closure"; Kruglanski & Webster, 1996). On the contrary, fairly certain jurors believe that one cannot reach a point of absolute certainty. Consequently, they search for more evidence and use it to examine and compare several alternatives, in order to choose the most plausible one. These people are also more ready to counterargue, discount, and anticipate the arguments for other possible verdicts. This view accords with the finding that people with strong hypotheses of defendant guilt owing to race-crime contiguity seek less information, and information that is likely to confirm rather than test their hypothesis (Jones & Kaplan, 2003). Different jurors may have different criteria for certainty and the sufficiency of evidence coverage, regardless of the standard jury instruction of the "reasonable doubt." Actually, research on juror reasoning has found a significant number of lay jurors characterized by an "absolutist" epistemology, that is, by the tendency to settle on the first possible solution without giving a full consideration of alternative explanations and discrepant evidence (Kuhn, Weinstock, & Flaton, 1994). Further studies on the jurors' epistemological orientation are needed. For example, it is still a matter of debate whether a "critical" (instead of "absolutist") epistemological orientation is related to expertise in a given domain, to general reasoning ability, or to a tendency toward systematic, rather than heuristic reasoning.

JURORS' EXPERTISE

Investigation on how judicial expertise may influence juries' reasoning and sentencing is of crucial relevance especially in countries like Italy (and others described in this volume) where juries are mixed.

A study carried out by one of us (Catellani, 1992) suggests that judicial expertise may indeed favor the adoption of a "critical" epistemological approach when reasoning about a judicial case. Expert and novice judges were required to think aloud about a case, and reach a verdict and a sanction. Analysis of the thinking aloud protocols revealed several differences between the groups, two of which are especially worth mentioning here. First, while reflecting upon the case expert judges use counterfactual thinking more often than novice judges. They compare and evaluate several alternative versions of the facts in order to achieve the most plausible reconstruction of the case at hand. This use of counterfactual thinking is consistent with the adoption of the "critical" epistemological approach described above. Second, expert judges are more likely to focus on the elements of the judicial case that are relevant for the case's legal qualification. On the contrary, they are less likely to focus their attention on elements that are not legally relevant. Taken together, these two differences suggest that, as compared to novices, experts have a higher control over their reasoning, evaluate and compare the plausibility of more alternative interpretations of the case, and are more likely to exclude, at least at a conscious level, those based on extra-legal norms. Note that the two differences, considering more alternatives, and focusing on relevant information, are the hallmarks of systematic reasoning (Chaiken & Trope, 1999).

If expert and novice judges appear to reason differently, the difference between expert judges and lay jurors is likely to be even more marked. Mixed juries may therefore be characterized by an imbalance in the reasoning abilities of the participants (Martín, Kaplan, & Álamo, 2003). Apart from such imbalance, the simple label of "expert" attributed to the judge (or the judges) in a mixed jury may have an influence on the entire decision-making process. Previous research has shown that people who are identified as the "experts" in a group involved in a reasoning task are more influential than the other group members (Bonner, Baumann, & Dalal, 2002; Stevenson & Over, 2001; see also Chaiken, 1980). For example, in a study on deductive reasoning, Stevenson and Over (2001) have found that people make inferences about the likelihood of a premise based on the expertise of the person producing it. On the one hand, when a premise is uttered by a novice and an alternative premise by an expert, people tend to infer that the expert is correcting the novice's error. On the other, when the premise is uttered by an expert and the alternative by a novice, people are inclined to think that the novice is wrong in disagreeing with the expert.

These results suggest that the decision-making process of a mixed jury may be characterized by a strong asymmetry in the influence of professional judges and lay jurors. In Italy, such an asymmetry is likely to be further enhanced by the fact that mixed juries deliberate not only on crime commission but also on procedural aspects and on the sanction. The last two issues often require complex reasoning processes that rely heavily on specific judicial knowledge. Consistently, an

Italian judge who has been serving for many years in mixed juries has highlighted that professional judges often intervene to solve disagreements among lay jurors and their interventions are given much weight (Lanza, 1997).

SUGGESTIONS FOR TRAINING JURORS (AND IMPROVING JURY DECISIONS)

Our discussion of how lay jurors and professional judges refer to extra-legal norms in judicial reasoning allows us to make some speculations about what conditions might improve decision quality in mixed juries.

We have seen that extra-legal norms are easily available to the jurors' minds and their evocation is likely to be automatic, that is, outside the person's conscious control, and may lead to biased judgments. One may therefore wonder about the possibility of increasing jurors' control over their reasoning process, thus reducing reference to extra-legal norms that may be easily available to the jurors' mind but not relevant (if not misleading) in the evaluation of the judicial case. Some researchers do indeed suggest that jurors may try to control their reference to stereotype-based norms. For example, they may do so in order to appear unprejudiced (Sommers & Ellsworth, 2000), but this effort may simply lead to a different type of bias, namely, an over correction effect. Foley and Pigott (2002) presented a judicial case involving either a Black or a White defendant to different juries, having either a White or a Black foreperson. Results showed that jurors attributed less responsibility to a Black defendant than a White one when the foreperson was Black, thus falling prey to reversed discrimination. No race-based difference was observed when the foreperson was White. Thus, a Black foreperson in a jury is likely to make the race issue salient in the context, and to induce jurors to diminish the responsibility of a Black defendant in order to appear unprejudiced.

Considering these limitations in jurors' reasoning, recent research has tried to highlight what conditions may improve decision quality and reduce biases (see Devine et al., 2001). The basic assumption of these studies is that the quality of jury decision-making would improve, if jurors systematically analyzed different alternatives before making a consensual reconstruction of the case, its legal definition, and the final verdict. One might imagine that in a jury such a comparative evaluation of different alternatives would be easier if jury is composed of diverse members, with different points of view. This does not seem to be the case, however. The presence of more people reasoning on the same issue does not necessarily lead to the expression and comparative evaluation of different points of view. On the contrary, some research results suggest that juries may be even more biased than single jurors (*inter alia* Kerr, Niedermeier, & Kaplan, 1999; Kerr, MacCoun, & Kramer, 1996). Consistently, recent research has shown that the "confirmation bias," that is, the tendency of individuals to seek more information supporting one's preferred alternative than information conflicting with this alternative, may also be found in group decision-making (Frey & Schulz-Hardt, 2001).

Useful suggestions on how to improve control on judicial reasoning may be found in the reasoning process we have previously described as typical of jurors

with a “critical” epistemological approach and of expert judges. As we have seen, these people tend to compare and evaluate different possible reconstructions and interpretations of the judicial event, not limiting themselves to the most available ones. A controlled and systematic use of counterfactual reasoning (such as the one that is observed in expert judges) may be especially useful in this regard. It may allow a useful confrontation of different interpretations, reducing the risk of sticking to the one that is most available to the juror’s mind, or most accepted by a majority. One might train jury members to make them aware of the potentials of counterfactual thinking in the judicial context. This might improve the quality of jurors’ reasoning, reduce the asymmetry between lay jurors and professional judges, and be helpful in preparing lay jurors to resist attorneys’ persuasive techniques, which very often rely on counterfactuals. However, a training program for both professional judges and lay jurors might not be easily implemented, especially if one considers that Italian lay jurors serve on a jury only for a 3-month session. Alternatively, a similar training program might be implemented for professional judges only, and this alone might lead to an improvement in the quality of juries’ decisions, at least in countries where mixed juries are employed. As we have seen, suggestions coming from an expert member of a decision-making group are likely to have a powerful influence on the other members of the group. In a specific case, the influence might consist in the trained judge (or judges) evoking a counterfactual mind-set in the rest of the jury, thus reducing the likelihood for the jury to stick to the most easily available, and possibly biased, interpretation of the case at hand (see also Kray & Galinsky, 2003). In a sense, the expert judges would play the role of the “devil’s advocate” described in studies on group decision-making (see Frey & Schulz-Hardt, 2001). In these studies, one or more members of the group are assigned the task of challenging other group members’ ideas, and the consequence is often an improvement in the overall quality of the final decision.

CONCLUSION

In this chapter, we have focused on how lay jurors and professional judges refer to legal and extra-legal norms while reasoning about judicial cases. We have made special reference to studies on counterfactual reasoning in the judicial context. In these studies, jurors are shown to mentally compare the actual case at hand with what they perceive as “normal” or “normative” according to their previous experiences, focusing on aspects that are often irrelevant for the legal evaluation of the case. While such a spontaneous use of counterfactual thinking may produce a biased decision, more controlled use of counterfactual thinking may improve decision quality. This is confirmed by studies on jurors characterized by a critical epistemological approach and/or by higher judicial expertise. When reconstructing a judicial case, these jurors do not stop at the most easily available interpretation, but instead generate and compare several possible interpretations in order to choose the most plausible. Such a strategic use of counterfactual reasoning is likely to reduce reference to legally irrelevant norms. Even when only a minority

of the jury can count on this kind of competence (e.g., trained judges in mixed juries), the whole jury is likely to benefit from it. In order to improve the quality of the juries' final decisions, instructions and training programs aimed at fostering the generation and comparison of different counterfactual alternatives would therefore seem highly recommended.

REFERENCES

- Acock, A. C., & Ireland, N. K. (1983). Attribution of blame in rape cases: The impact of norm violation, gender, and sex role attitude. *Sex Roles*, 9, 179–193.
- Barna, L. M. (1985). Difficulties in communicating among people of different cultures. In L. Samovar & P. Porter (Eds.), *Intercultural Communication: A Reader* (pp. 330–338). Belmont, CA: Wadsworth.
- Bodenhausen, G. V. (1988). Stereotypic biases in social decision-making: Testing process models of stereotype use. *Journal of Personality and Social Psychology*, 55, 726–737.
- Bonner, B. L., Baumann, M. R., & Dalal, R. S. (2002). The effects of member expertise on group decision-making and performance. *Organizational Behavior and Human Decision Processes*, 88, 719–736.
- Bothwell, R. K., & Duhon, K. W. (1994). Counterfactual thinking and plaintiff compensation. *Journal of Social Psychology*, 134, 705–706.
- Branscombe, N. R., & Weir, J. A. (1992). Resistance as stereotype-inconsistency: Consequences for judgments of rape victims. *Journal of Social and Clinical Psychology*, 11, 80–102.
- Branscombe, N. R., Crosby, P., & Weir, J. A. (1993). Social inferences concerning male and female homeowners who use a gun to shoot an intruder. *Aggressive Behavior*, 19, 113–124.
- Branscombe, N. R., Owen, S., Gartska, T., & Coleman, J. (1996). Rape and accident counterfactuals: Who might have done otherwise and would it have changed the outcome? *Journal of Applied Social Psychology*, 26, 1042–1067.
- Cadoppi, A. (1999). *Il valore del precedente nel diritto penale: uno studio sulla dimensione in action della legalità*. [The value of the precedent in the criminal trial: A study on the action dimension of legality]. Torino: Giappichelli.
- Carroll, J. S., Perkwitz, W. T., Lurigio, A. J., & Weaver, F. M. (1987). Sentencing goals, causal attributions, ideology and personality. *Journal of Personality and Social Psychology*, 52, 107–118.
- Catellani, P. (1992). *Il giudice esperto. Psicologia cognitiva e ragionamento giudiziario*. [The expert judge. Cognitive psychology and judicial reasoning]. Bologna: Il Mulino.
- Catellani, P., Alberici, A. I., & Milesi, P. (2004). Counterfactual thinking and stereotypes: The nonconformity effect. *European Journal of Social Psychology*, 34, 421–436.
- Catellani, P., & Milesi, P. (2001). Counterfactuals and roles: Mock victims' and perpetrators' accounts of judicial cases. *European Journal of Social Psychology*, 31, 247–264.
- Catellani, P., & Milesi, P. (2004). Does your counterfactual become my counterfactual? Stereotyped expectations and suspicion. Manuscript submitted for publication.
- Catellani, P., & Milesi, P. (2005). When the social context frames the case: Counterfactuals in the courtroom. In D. Mandel, D. J. Hilton, & P. Catellani (Eds.), *The psychology of counterfactual thinking*. London: Routledge.

- Catellani, P., & Milesi, P. (2006). Counterfactuals and orientation to defendants' promotion in juvenile juries. Manuscript submitted for publication.
- Chaiken, S. (1980). Heuristic versus systematic information processing and the use of source versus message cues in persuasion. *Journal of Personality and Social Psychology*, 39, 752-766.
- Chaiken, S., & Trope, Y. (1999). *Dual-processes theories in social psychology*. New York: Guilford.
- Choi, I., & Nisbett, R. E. (1998). Situational salience and cultural differences in the correspondence bias and in the actor-observer bias. *Personality and Social Psychology Bulletin*, 24, 949-960.
- Devine, D. J., Clayton, L. D., Dunford B. B., Seying, R., & Pryce J. (2001). Jury decision making: 45 years of empirical research on deliberating groups. *Psychology, Public Policy and Law*, 7, 622-727.
- Estrich, S. (1987). *Real rape*. Cambridge, MA: Harvard University Press.
- Finkel, N. J., & Groscup, J. L. (1997). Crime prototypes, objective versus subjective culpability, and a commonsense balance. *Law and Human Behavior*, 21, 209-230.
- Foley, L. A., & Pigott, M. A. (2002). Race, self-presentation and reverse discrimination in jury decisions. *American Journal of Forensic Psychology*, 20, 37-52.
- Frey, D., & Schulz-Hardt, S. (2001). Confirmation bias in group information seeking and its implications for decision making in administration, business and politics. In F. Butera & G. Mugny (Eds.), *Social influence in social reality. Promoting individual and social change* (pp. 53-73). Bern: Hogrefe & Huber Publishers.
- García, L. T., & Griffith, W. (1978). Authoritarianism-situation interactions in the determination of punitiveness: Engaging authoritarian ideology. *Journal of Research in Personality*, 12, 469-478.
- Giner-Sorolla, R., Chaiken, S., & Lutz, S. (2002). Validity beliefs and ideology can influence legal case judgments differently. *Law & Human Behavior*, 26, 507-526.
- Gordon, R. A. (1990). Attributions for blue-collar and white-collar crime: The effect of subjects and defendant race on simulated juror decisions. *Journal of Applied Social Psychology*, 128, 971-983.
- Gordon, R. A., & Anderson, K. S. (1995). Perceptions of race-stereotypic and race-nonstereotypic crimes: The impact of response-time instructions on attributions and judgments. *Basic & Applied Social Psychology*, 16, 455-470.
- Hamilton, V. L. (1976). Individual differences in ascriptions of responsibility, guilt, and appropriate punishment. In G. Bermant, C. Nemeth, & N. J. Vidmar (Eds.), *Psychology and the Law*. Lexington, MA: Heath.
- Heaven, P. C. L., Connors, J., & Pretorius, A. (1998). Victim characteristics and attribution of rape blame in Australia and South Africa. *Journal of Social Psychology*, 138, 131-133.
- Howard, J. A. (1984). The "normal" victim: The effects of gender stereotypes on reactions to victims. *Social Psychology Quarterly*, 47, 270-281.
- Jones, C. S., & Kaplan, M. F. (2003). The effects of racially stereotypical crimes on juror decision-making and information-processing strategies. *Basic and Applied Social Psychology*, 25, 1-13.
- Kahneman, D., & Miller, D. T. (1986). Norm theory: Comparing reality to its alternatives. *Psychological Review*, 93, 136-153.
- Kaplan, M. F., & Miller, L. E. (1978). Effects of juror identification with the victim depend on likelihood of victimization. *Law and Human Behavior*, 2, 353-363.
- Kerr, N. L., MacCoun, R., & Kramer, G. P. (1996). Bias in judgment: Comparing individuals and groups. *Psychological Review*, 103, 687-719.

- Kerr, N. L., Niedermeier, K. E., & Kaplan, M. F. (1999). Bias in jurors vs. bias in juries: New evidence from the SDS perspective. *Organizational Behaviour and Human Decision Processes*, 80, 70–86.
- Klauer, K. C., Jacobsen, T., & Migulla, G. (1995). Counterfactual processing: Test of a hierarchical correspondence model. *European Journal of Social Psychology*, 25, 577–595.
- Krahè, B. (1988). Victim and observer characteristics as determinants of responsibility attribution to victims of rape. *Journal of Applied Social Psychology*, 18, 50–8.
- Krahè, B. (1991). Social psychological issues in the study of rape. *European Review of Social Psychology*, 2, 279–309.
- Kray, L. J., & Galinsky, A. D. (2003). The debiasing effect of counterfactual mind-sets: Increasing the search for disconfirmatory information in group decisions. *Organizational Behavior and Human Decision Processes*, 91, 69–81.
- Kruglanski, A. W., & Webster, D. M. (1996). Motivated closing of the mind: “Seizing” and “freezing”. *Psychological Review*, 103, 263–283.
- Kuhn, D., Weinstock, M. P., & Flaton, R. A. (1994). How well do jurors reason? Competence dimensions of individual variation in a juror reasoning task. *Psychological Science*, 5, 289–296.
- Lanza, L. (1994). *Gli omicidi in famiglia. Le dinamiche della decisione in Corte d'assise con l'analisi di trenta casi di omicidio domestico* [Homicides within the family. Decision processes in court: Analysis of thirty cases of domestic homicide]. Milano: Giuffrè.
- Lanza, L. (1997). Il percorso della decisione [Decision percourse]. In A. Forza (Ed.), *Il processo invisibile. Le dinamiche psicologiche nel processo penale* (pp. 39–71). Venezia: Marsilio.
- Lonsway, K. A., & Fitzgerald, L. F. (1995). Attitudinal antecedents of rape myth acceptance: A theoretical and empirical reexamination. *Journal of Personality and Social Psychology*, 68, 704–711.
- Macrae, C. N., Milne, A. B., & Griffiths, R. J. (1993). Counterfactual thinking and the perception of criminal behaviour. *British Journal of Social Psychology*, 84, 221–226.
- Mandel, D. (2003). Judgment dissociation theory: An analysis of differences in causal, counterfactual, and covariational reasoning. *Journal of Experimental Psychology: General*, 132, 419–434.
- Mandel, D. R., & Lehman, D. R. (1996). Counterfactual thinking and ascriptions of cause and preventability. *Journal of Personality and Social Psychology*, 71, 450–463.
- Markus, H. R., & Kitayama, S. (1991). Culture and the self: Implications for cognition, emotion, and motivation. *Psychological Review*, 98, 224–253.
- Martín, A. M., Kaplan, M. F., & Álamo, J. M. (2003). Discussion content and perception of deliberation in western European versus American juries. *Psychology, Crime & Law*, 9, 247–263.
- Milesi, P., & Alberici, A. I. (2001). Differenze interculturali nella definizione del reato di stupro. [Crosscultural differences in the definition of the rape crime]. *Psicologia & Giustizia. La Rivista Italiana On Line di Psicologia Giuridica*, 2, 1. Retrieved January, 10, 2005, from <http://www.psicologiagiuridica.com/GENERALE/ARCHIVIO.htm>.
- Miller, D. T., & McFarland, C. (1986). Counterfactual thinking and victim compensation: A test of norm theory. *Personality and Social Psychology Bulletin*, 12, 513–519.
- Miller, J. G. (1984). Culture and the development of everyday social explanation. *Journal of Personality and Social Psychology*, 46, 961–978.
- Mitchell, H. E. (1973). *Authoritarian punitiveness in simulated juror decision making: The good guys don't always wear white hats*. Paper presented at the Annual Meeting of Midwestern Psychological Association, Chicago.

- Nario-Redmond, M. R., & Branscombe, N. R. (1996). It could have been better or it might have been worse: Implications for blame assignment in rape cases. *Basic and Applied Social Psychology*, 18, 347–366.
- Pallak, S. R., & Davies, J. M. (1982). Finding fault versus attributing responsibility: Using facts differently. *Personality and Social Psychology Bulletin*, 8, 454–459.
- Smith, V. L. (1991). Prototypes in the courtroom: Lay representations of legal concepts. *Journal of Personality and Social Psychology*, 61, 857–872.
- Smith, V. L. (1993). When prior knowledge and law collide: Helping jurors to use the law. *Law and Human Behavior*, 17, 507–536.
- Smith, V. L., & Studebaker, C. A. (1996). What do you expect? The influence of people's prior knowledge of crime categories on fact-finding. *Law and Human Behavior*, 20, 517–532.
- Sommers, S. R., & Ellsworth, P. C. (2000). Race in the courtroom: Perceptions of guilt and dispositional attributions. *Personality and Social Psychology Bulletin*, 26, 1367–1379.
- Stella, F. (2003). *Giustizia e modernità. La protezione dell'innocente e la tutela delle vittime* [Justice and modernity. Protection of the innocents and of the victims]. Milano: Giuffrè Editore.
- Stevenson, R. J., & Over, D. E. (2001). Reasoning from uncertain premises: Effects of expertise and conversational context. *Thinking & Reasoning*, 7, 367–390.
- Tetlock, P. E., Bernzweig, J., & Gallant, J. L. (1985). Supreme court decision-making: Cognitive style as a predictor of ideological consistency voting. *Journal of Personality and Social Psychology*, 48, 1227–1239.
- Thibaut, J. W., & Kelley, H. H. (1959). *The social psychology of groups*. Oxford, England: Wiley.
- Triandis, H. C. (1989). The self and social behaviour in differing cultural contexts. *Psychological Review*, 96, 506–520.
- Van Knippenberg, A., Dijksterhuis, A., & Vermeulen D. (1999). Judgement and memory of a criminal act: The effects of stereotypes and cognitive load. *European Journal of Social Psychology*, 29, 191–201.
- Weinstock, M. P., & Flaton, R. A. (2004). Evidence coverage and argument skills: Cognitive factors in a juror's verdict choice. *Journal of Behavioral Decision Making*, 17, 191–212.
- Wells, G. L., & Gavanski, I. (1989). Mental simulation of causality. *Journal of Personality and Social Psychology*, 56, 161–169.
- Wells, G. L., Taylor, B. R., & Turtle, J. W. (1987). The undoing of scenarios. *Journal of Personality and Social Psychology*, 53, 421–430.
- Wiener, R. L., Gaborit, M., Pritchard, C. C., & McDonough, E. M. (1994). Counterfactual thinking in mock jurors' assessments of negligence: A preliminary investigation. *Behavioral Sciences and the Law*, 12, 89–102.
- Wiener, R. L., Richmond, T. L., Seib, H. M., Rauch, S. M., & Hackney, A. A. (2002). The psychology of telling murder stories: do we think in scripts, exemplars, or prototypes? *Behavioral Sciences and the Law*, 20, 119–139.