des variations dans des condamnations pour des délits et/ou délinquents semblables. Une proposition afin de réduire cette variabilité est la création des 'sentencing councils' mais qui n'éliminent pas le pouvoir discrétionnaire du juge et ne déplacent pas la variabilité sur d'autres agents dans le système de justice criminelle. L'étude expérimentale tente ici de montrer l'influence des discussions au 'sentencing councils' sur la réduction des disparités dans une situation de laboratoire. La convergence vers la moyenne des décisions judiciaires (la réduction de la variation) serait en fonction des discussions de groupe, selon des théories de la formation des normes. D'autre part, l'étude a examiné l'effet de noter par écrit la décision avant la discussion collective, sur la susceptibilité des juges à l'influence du groupe. L'étude a donc analysé trois niveaux de la condition 'sentencing council', avec deux conditions de pre-test. Des sujets en rôle de juge ont été présenté avec une description d'une affaire de vol à main armé. Les résultats ont montré que la variabilité au 'sentencing councils' peut être réduit par la discussion. On n'a pas trouvé des comportements indulgents et/ou des changements de sevérité comme on a pu attendre des travaux sur l'hypothèse de 'polarization'. Les applications de ces principes théoriques du processus de formation de normes au monde réel sont examinés. Des 'sentencing councils' pourraient probablement réduire la disparité entre les condamnations mais ils faudraient les complémenter par d'autres innovations de structure et de procédure.

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Decision-making of industrial tribunals as described by professional and lay judges

Several years of laboratory research on group decision-making undertaken at the University of Augsburg (cf., Brandstätter, 1978) made it clear that we should look for more empirical evidence from natural settings in order to assess the generalizability of our experimental results. Our first field-study focused on videotaped discussions of twenty organizational groups making decisions of pressing importance (Rüttinger, 1978; Peltzer, 1979). A second study, of which some results are reported here, focused on the deliberation stage of industrial tribunals composed of a professional judge and two lay judges. We wanted to find out by interviews 1) on 'the last controversial case', and 2) on 'a résumé of their general experiences', how judges describe and evaluate the process and outcome of court deliberation. This report centres on differences in perspectives between professional and lay judges.

Structure and rules of first instance labour courts in the Federal Republic of Germany

There are three court levels. We are dealing with the first instance only. Each tribunal of a labour court is composed of a professional judge as chairman and two lay judges, the assessor representing the employers and the assessor representing the employees. The assessor of the employees will be referred to as the labour-nominated lay judge, and the assessor of the employer as the employer-nominated lay

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judge. The labour courts (*Arbeitsgerichte*) have exclusive jurisdiction on 1) disputes related to individual work contracts, 2) conflicts related to claims for old-age pension provided by the employer, 3) disputes concerning the rights of work committees and management, 4) disputes between workers resulting from their common work and 5) some disputes on collective agreements (Zöllner, 1977). The rules follow mainly the code of civil procedure (*Zivilprozeßordnung*), but there are also some specific features: for example, before the trial, an obligatory conciliatory proceeding (*Güteverhandlung*) has to take place under the presidency of the professional judge without lay assessors. Legal advisers of the employers' confederation and of the unions and attorneys as well may represent the parties in court. Immediately before the trial, usually a preparatory consultation (*Vorberatung*) of the court members informs the lay judges on the case. They are also entitled to consult the records. Upon deliberation of the tribunal a decision is made by majority rule, and the sentence or order is passed by the chairman (the professional judge). For similarities and differences between the labour court (*Arbeitsgericht*) in Germany and the regional offices of industrial tribunals in Great Britain, Zöllner (1977) and Hepple and O'Higgins (1976) can be consulted.

The theoretical frame of reference

Since we wanted to explore the group deliberation process by interviewing the court members, three kinds of theories had to be considered, i.e., general theories on group decision making, theories more specifically related to court sentencing, and theories on reconstructing (reporting) sequences of past social interaction in an interview situation.

1. People involved in a discussion in order to reach a decision try to influence each other, and are influenced by each other mainly in three ways: a) they communicate their preferences and learn the other's stand; b) they communicate promises and threats, rewards and punishments for yielding or resisting the attempted influence (i.e., they learn the other's demands); and c) they communicate the reasons for these preferences and learn the other's arguments (Brandstätter, 1978). In the present study, theories and experimental results on group decision-making have been used as exploration guidelines only, not with the goal of generating specific hypotheses.

2. A special characteristic of court decisions is their rather strict regulation by substantive legal norms and formal procedural rules. Quite often, the problems to be solved are not so well defined and structured. Much discretion is left in the ascertainment of the facts, in the interpretation of the law, and in its application to the facts (Seidman, 1969; Opp, 1972). There is ample room for the judge's subjective evaluations and inferences, as well as for specific influences of patterns of social interaction between the participants in the court procedure (cf., Saks and Hastie, 1978). If we try to trace back the influence process in an industrial tribunal, we have to be aware of the predominant role of the professional judge, and of his expert power (French and Raven, 1959) within a group of equally entitled court members. We expect a clear differentiation, mainly on the dimension of expert power, between the role of the professional judge on the one side and that of the lay judges on the other, and some differences lying mainly on the dimension 'conservatism' between the role perceptions and role behaviour of the lay judge nominated by the employer's federation, and of the lay judge nominated by the union.

Hypothesis 1
The lay judges a) attribute more expert power to the professional judge within their tribunal than to the lay judge, and b) generally perceive the professional judge as dominating the deliberation process and outcome.

Hypothesis 2
Lay judges nominated by the employer's federation perceive themselves and are perceived by the labour representatives and by the professional judges as more conservative than lay judges nominated by the union.

Both hypotheses seem so obvious and plausible that their confirmation would add less to our understanding of the functioning of industrial tribunals than their (rather unlikely) disconfirmation.

3. As yet, reconstructing sequences of social interaction from memory has not attracted much theoretical thought or experimental research. Hence, we know little of the rules people follow in defining, selecting and coding units of social action (cf., Argyle et al., 1981) when memorizing and retrieving patterns of interaction: studies on memorizing social episodes rarely deal with real interaction, but

mostly with stories or movies (cf., Wyer and Carlston, 1979). We also searched the literature for studies that would shed light on the validity of interviews as a means of collecting data on remembered sequences of social interaction. However, as far as we could see, there was none. We had expected that among the numerous studies of jury trials (cf., Nemeth, 1981) at least a few would imply interviews of real jurors, but we were wrong. By his systematic observations as participant in group decision-making within civil jurisdiction, Lautmann (1972) comes closest to our endeavours, although he neither refers to industrial tribunals nor applies quantitative methods.

The judges had been asked two types of questions: a) on their general experience with and attitudes towards industrial tribunals, and b) on their observations and impressions from the most recent case 'where there was some disagreement'. According to the theory of script processing which applies the concept of schema to event perception (Abelson, 1981), we would expect that persons perceive social events according to their assumptions about the sequences of social interaction in certain types of situations. If, for instance, a judge has derived the idea from his prior direct or indirect experience that the lay judges listen first to what he, the expert, has to say in order to avoid disagreement, he will tend to perceive and to remember the episodes of a specific deliberation in a way that is consistent with his preconceptions.

Although our distinction between 'general questions' on the judge's experiences with industrial tribunals, and 'specific questions' on the most recent trial, was not guided by the script concept and its application to the perception of social events from the beginning, this concept lends itself easily to such an interpretation. Following this idea, we predicted that the judge's general notions on the structure of events in labour court deliberations influence his perceptions and memories of a concrete case.

Hypothesis 3

Subjects who generally perceive the deliberation stage as a situation which is dominated by the expert power of the professional judge, will remember the most recent case as one where deliberation and decision-making was dominated by the professional judge.

Hypothesis 4

Subjects who generally perceive the deliberation stage as a situation where sharing responsibility and social integration is common and important, will remember the most recent case in terms of social integration.

Method

The deliberation of the labour court tribunal takes place *in camera* (*Geheime Beratung*), and no minutes are taken. Therefore, the process can only be studied by asking members of the tribunals to describe and evaluate the deliberation process and outcome. The interview was made up of three parts. First, the judge had to think of the most recent case where there was some indecision or disagreement among the members of the tribunal at the beginning of the deliberation stage, and to describe in detail the problems and the process of deliberation. Second, the interviewer asked questions concerning the deliberation of the specific case. Third, he gathered information on the judge's general experiences, role perceptions and attitudes. On average, an interview took one and a half hours.

TABLE 1
Demographic characteristics of the professional judges (PJs), employer-nominated lay judges (LJEs), and labour-nominated lay judges (LJLs)

		PJs (n = 21)	LJEs (n = 12)	LJLs (n = 12)
Age	$\bar{x}$	34.8	49.5	46.9
	2	2.1	11.4	13.0
Practice in court				
years	$\bar{x}$	4.7	5.5	5.9
	s	2.4	5.3	4.4
Median number of cases		—	39	48
Frequencies of party preference:				
conservative party		1	5	5
social democratic party		14	1	5
unknown party preference		6	6	2

Twenty-one professional judges (PJs), all except one of a large Bavarian district labour court, and a quasi-random sample of twenty-four lay judges (LJs), half labour's, half employer's, were interviewed. Some demographic characteristics of the different samples of judges are given in Table 1. For several reasons, it was not possible to interview all three members of a tribunal on a specific case; rather, each interviewee referred independently to the last controversial case. All interviewees agreed to the tape recording. Anonymity of the judges and parties involved was assured and strictly observed. In a detailed and comprehensive content analysis (Lisch and Kriz, 1978), the transcripts of the interviews were coded by the second author, partly in qualitative and partly in ordered categories. Cues of the interviewee's role within the tribunal could not be deleted from the transcripts. The objectivity (interrater reliability) of the coding was checked for ten randomly selected questions only, and proved to be satisfactory (median K = 0.65; for the coefficient K (kappa) cf. Asendorpf and Wallbott, 1979).

Results

Professional judges are high in expert power (Hypothesis 1)

In testing this first hypothesis about the expert power of the professional judge, we first looked at specific reports (related to the most recent case) and at general reports (related to their general experience) of one LJ's impressions of the PJ and the other LJ with respect to their expert power. Then, we wanted to know whether PJs and LJs agreed in their role perceptions and role behaviour relevant to the hypothesis.

When LJs compare the other LJ with the PJ, PJs are remembered by the LJs as having contributed more arguments than LJs ($\chi^2 = 3.59$, $p < 0.06$), as having used technical terms more often ($\chi^2 = 4.80$, $p < 0.03$), and as having consumed a larger amount of the discussion time than the LJs ($\chi^2 = 6.40$, $p < 0.01$). Significant differences in discussion time between LJs and PJs also appear in the LJs' reports on their experience in general ($\chi^2 = 14.51$, $p < 0.001$). Only one out of eleven LJs answering the question would have liked to contribute more to the discussion. LJs had the impression that the other LJ changed his opinion more often than the PJ ($\chi^2 = 4.03$, $p < 0.05$).

Referring to their general experience, LJs stated very clearly that they were more often convinced by the PJ than by the other LJ ($\chi^2 = 10.00$, $p < 0.01$), and that LJs changed their opinion more often than PJs ($\chi^2 = 4.00$, $p < 0.05$). The competence of the PJ was usually rated higher than that of the other LJ ($\chi^2 = 6.87$, $p < 0.01$), and the PJ seemed to have been better prepared than the other LJ ($\chi^2 = 12.88$, $p < 0.01$). The answers to two other relevant questions (about the kind of arguments used by the partners and about the level of satisfaction with the amount of participation of the partner in the discussion) did not significantly support the hypothesis, but were in the predicted direction.

As we can see from these results, Hypothesis 1 seems well supported: LJs perceive the PJ as more influential because of his higher expert power. However, it is somewhat surprising that as many as fifteen out of twenty LJs perceive themselves as virtually equal partners of the PJ in the deliberation stage, and that thirteen out of sixteen think the PJs would look at them as virtually equal partners.

As to congruences and discrepancies between PJs' and LJs' role perceptions and role behaviour, fifteen out of twenty LJs perceive themselves as virtually equal partners of the PJ in the deliberation process, but only two out of nineteen PJs agree with this view ($\chi^2 = 16.47$, $p < 0.01$). LJs are also not aware of the fact that PJs do not look on them as virtually equal partners, since thirteen out of sixteen LJs are convinced of this equality ($\chi^2 = 17.47$, $p < 0.01$). Finally, PJs do not realize that LJs perceive themselves as virtually equal partners, since only three out of ten have the idea that LJs would perceive themselves as equal partners ($\chi^2 = 5.63$, $p < 0.02$).

Although the interviewer had asked for details on the most recent controversial case, two PJs and two LJs reported unanimity from the beginning. Whereas the PJ reported only one case where LJs formed a coalition against the PJ at the beginning, the LJs reported seven such cases. With one exception, all the reported coalitions include the reporting person.

Referring to the most recent case, the PJs and the LJs reported that the LJs have participated less in the discussion than the PJs. In judging the LJs' participation in the discussion, based on general experience, PJs and LJs again did not differ significantly.

Whereas LJs did not report significantly more frequent changes of opinion during the deliberation of the last case (five PJs out of sixteen, and seven LJs out of eighteen reported a change), the reports on general experience showed more clearly a difference in the expected direction ($\chi^2 = 3.77$, $p < 0.05$). Three out of nine PJs have the general impression that LJs change their opinion often or sometimes, thus

agreeing quite well with the LJs' estimates.

With respect to the deliberation of the concrete case, seven out of sixteen LJs attribute low competence to the other LJ. The PJs are less critical, since only one out of eleven attributed low competence to the LJs ($\varkappa^2 = 4.2, p < 0.04$). In their general reports, PJs and LJs agree in attributing more competence to the PJs' contributions than to those of the LJs (eighteen PJs out of twenty, and eighteen LJs out of twenty-three said that, generally, the PJs contributions were more competent than those of the LJs).

Finally, ten PJs out of seventeen, but only three LJs out of fifteen find it generally easy to decide on a case ($\varkappa^2 = 3.83, p < 0.05$).

Employer-nominated lay judges are more conservative than labour-nominated lay judges (Hypothesis 2)

There are four general questions related to Hypothesis 2, three of them focusing on the significance of robe-wearing. LJs representing the employer tend to have a more positive attitude towards the robe-wearing of the PJ than LJs representing labour ($\varkappa^2 = 2.93, p < 0.09$). If they were in the position of a PJ, they would be more willing to wear a robe than the labour representatives among the LJs ($\varkappa^2 = 5.40, p < 0.02$). The employer-nominated LJs often give more reasons against the robe-wearing of PJs which stress the status difference between PJs and LJs ($\varkappa^2 = 7.67, p < 0.01$).

The two categories of LJs do not differ in their preference for a well-groomed appearance of the members of the tribunal.

Correlation between specific and general dominance score (Hypothesis 3)

For the self-reported S's dominance exhibited during the deliberation stage of the most recent trial, a composite score has been derived from the following five statements. The range of the composite score is from 0, if none of the statements is true, to 5 if all of them are true.

Dominance items specific to the recent trial:

The J stated his opinion right at the beginning of the deliberation;
He tried to convince one or both of the other court members of his opinion at some point of time;
The J's share of discussion time was above the median (of professional judges, or lay judges, respectively);
The J did not change his opinion during the deliberation;
The J was convinced that the sentence would have been the same if he had been in charge of the case with different colleagues.

The dominance score derived from statements about industrial tribunals in general comprises the following items for professional judges and (in parentheses) for lay judges:

General dominance items:

Has a negative (positive) attitude towards group decision-making by industrial tribunals;
Thinks that lay judges should (not) have advisory status only;
Has the impression that lay judges are unequal (equal) partners within the tribunals;
Thinks that lay judges contribute little (much) to the deliberation stage of the court;
Says that he rarely changes his opinion during the deliberation stage;
Thinks that the professional judge is (not) more competent than the lay judges;
Is (not) favourable towards robe-wearing of professional judges.

The two dominance scores, i.e., that derived from statements about a recent trial and that derived from general statements, are significantly correlated ($r = 0.40; p < 0.05$). Therefore Hypothesis 3 has been confirmed (see Table 2).

TABLE 2
Correlations, arithmetic means and standard deviations of dominance and social integration, derived from statements on recent trials and from statements on general experience

	(1)	(2)	(3)	(4)	$\bar{x}$	s
(1) Dominance in recent trial		.03	.40*	−.18	2.97	1.21
(2) Social integration in recent trial			.03	.24	4.47	1.31
(3) Dominance in general				.02	4.94	1.54
(4) Social integration in general					2.21	1.08

Note. N = 34.
*$p < 0.05$.

Correlation between specific and general social integration scores (Hypothesis 4)

For testing Hypothesis 4, the scores were derived in the following way:

Social integration items specific to the recent trial:

All three members of the tribunal contributed in a well balanced way to the deliberation;
It was important to me to reach a unanimous decision;
There was no formal vote;

There was no final disagreement about the sentence;
I had the impression that the others were satisfied with the decision outcome.

General social integration items:

Conflicts between professional and lay judges never, or very rarely, occur;
It is important to me to reach a unanimous decision;
Professional and lay judges should not differ in wearing robes;
Professional and lay judges have the same responsibility for the sentence.

The correlation between specific and the general social integration scores is not significant ($r = 0.24$; $p < 0.05$; Table 2). Therefore Hypothesis 4 has not been confirmed. However, the general social integration score is significantly correlated with the specific judgement of the partner's competence (quality of his contributions, objectivity of his arguments, and general competence) ($r = 0.45$; $p < 0.01$). There are some other results which support the predicted correspondence between general and specific answers, for instance those referring to time needed for the decision ($r = 0.78$, $n = 18$, $p < 0.01$).

Discriminant analysis

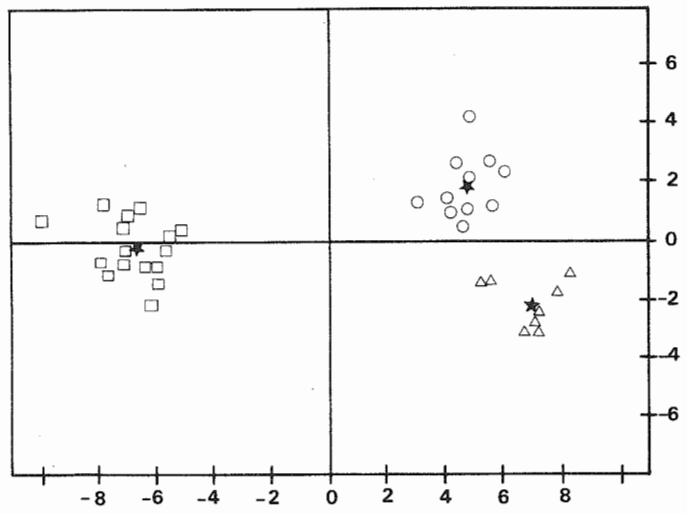
We have seen that professional and lay judges differ in their answers to a number of questions. A more concise way of comparing the groups of judges is given by a multiple discriminant analysis of the whole set of answers. It tells us how many independent dimensions we need, and how we have to weigh each of the answers on these dimensions in order to separate the groups most distinctly.

The first analysis is based on questions related to the most recent case, the second analysis comprises the answers to the general questions. There is a set of thirty specific questions and another one of

twenty-four general questions which have been answered by all three groups of judges in a comparable way. The answers have been coded partly in ordered categories, partly in binary nominal categories. Later on, the ordered categories have been dichotomized. Since the conditions of discriminant analysis (multidimensional normality of distributions, equal covariance structures of the different groups) are not strictly met by the data, the results are more of a descriptive than of an inferential nature. In addition, the samples (number of judges) are very small compared to the rather large number of variables, thus making inferences from the results even more risky. Since there seems to be no model better suited to this kind of data, we tried to safeguard against possible wrong conclusions by comparing the results of the discriminant analysis of our data with results derived from randomly generated data.

The discriminant analysis of the thirty answers to the questions about the most recent case ('specific questions') results in only one significant function ($p < 0.01$) picking up 94.5 percent of the total variance existing in the discriminating variables. Figure 1 presents the main results of the analysis.

FIGURE 1
Discriminant space for three groups of judges based on specific questions

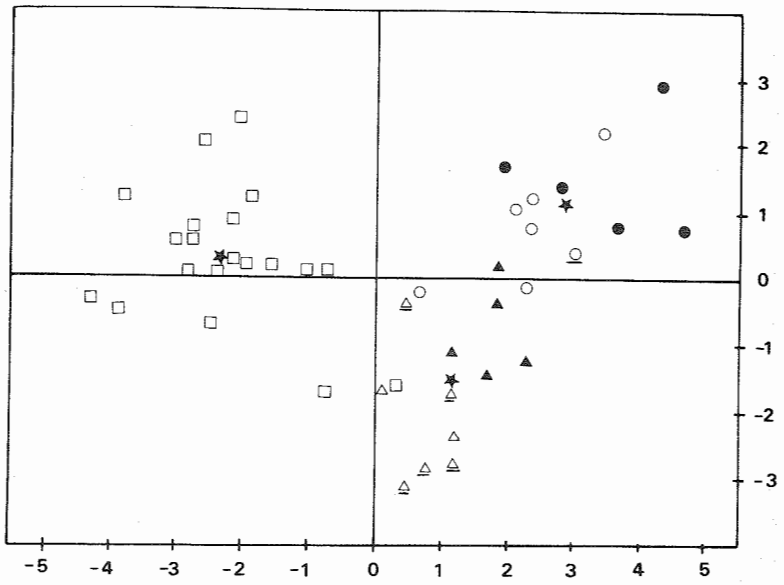


□ professional judge, ○ employer-nominated lay judge, △ labour-nominated lay judge, ★ group centroids

The discriminant space for the twenty-four answers to the general questions is shown in Figure 2. Again, only the first function is significant ($p < 0.01$) with 83.25 percent of the total variance. It is remarkable that the employer-nominated lay judges as well as labor-nominated lay judges who explicitly stated a preference for the conservative party, tend to be located on the upper right corner of the respective group dispersion.

Although discriminant analysis of randomly generated variables (not presented here) results in some spurious separation of the groups, it falls short of the discriminative power of the real variables.

FIGURE 2
Discriminant space for three groups of judges based on general questions



□ professional judge, ○ employer-nominated lay judge, △ labour-nominated lay judge
● or ▲ preference for conservative party (CSU)
○ or △ preference for social democratic party (SPD)
★ group centroids

Cluster analysis

Considering the fact that the model of multiple discriminant analysis is not fully appropriate in our case, it seems advisable to corroborate the findings by an alternative method of data analysis. If the three groups of judges really differ in their answers, we would expect that a hierarchical cluster analysis (Rollett and Bartram, 1976; Ward, 1963) will a) in some way reproduce the three classes of judges, b) show a closer affinity between professional judges and employer representatives than between the former and labour representatives among the lay judges, and c) lead to subclasses characterized by meaningful response patterns.

For the groups defined by the cluster analysis, a multiple discriminant analysis can be performed in order to get some idea about the location of the groups on the first two discriminant dimensions.

A cluster analysis based on the dichotomized answers to the thirty specific questions leads to five clusters, if one stops the hierarchical clustering just before, the pooled within-group variance increases sharply (cf., Figure 3).

The dendrogram depicted in Figure 3 orders the clusters from left to right according to the distances of the centroids on the first discriminant dimension (cf., Figure 4).

There are two rather pure clusters of professional judges (A and C), each containing only one employers' representative. Cluster E mainly consists of employers' representatives, but also includes two labour representatives and one professional judge. The clusters B and D are rather mixed. There is a slight indication of some affinity between professional judges and employers' representatives. The first two discriminant functions explain 72 percent and 24 percent of the total variance.

There are two distinct groups of professional judges. Group A reports some disagreement at the beginning, some efforts to influence the others, influence attempts by the others, emotional arguments from the others, own opinion change, and dislike for the others. Group C tends to respond in the opposite way. For these items the differences between the two groups are significant ($p < 0.05$). Groups D and E are mainly composed of lay judges. The members of group D (majority of labour-nominated lay judges tend to report: stating of their own opinion right at the beginning, influence attempts by the others, dissatisfaction with the amount of their colleagues' participation, formal voting, attribution of low

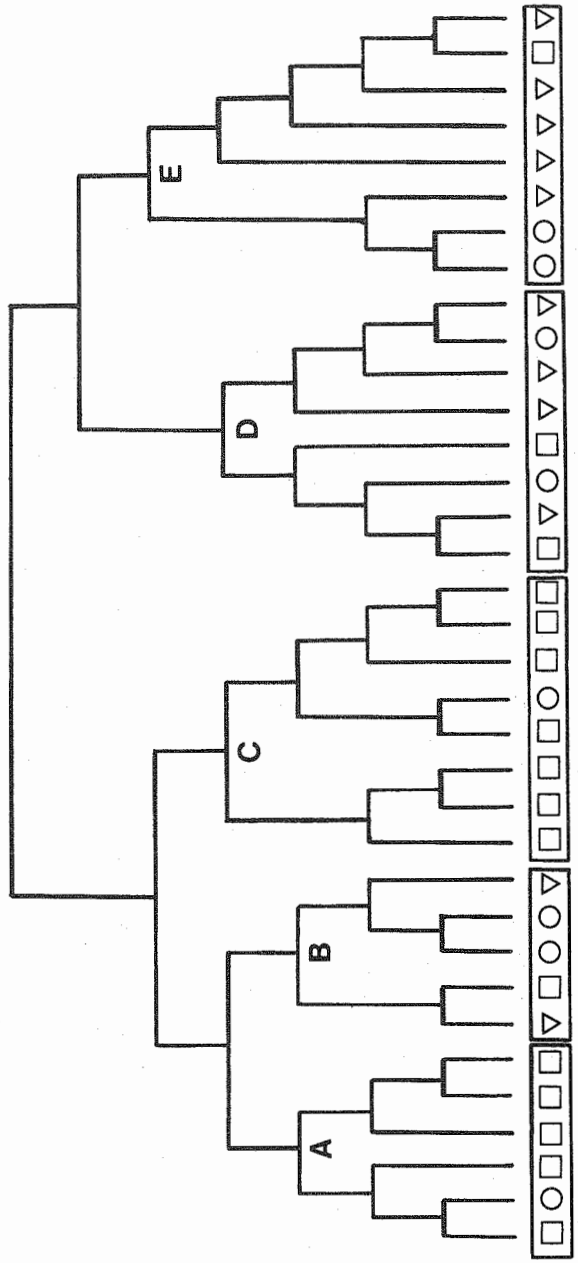
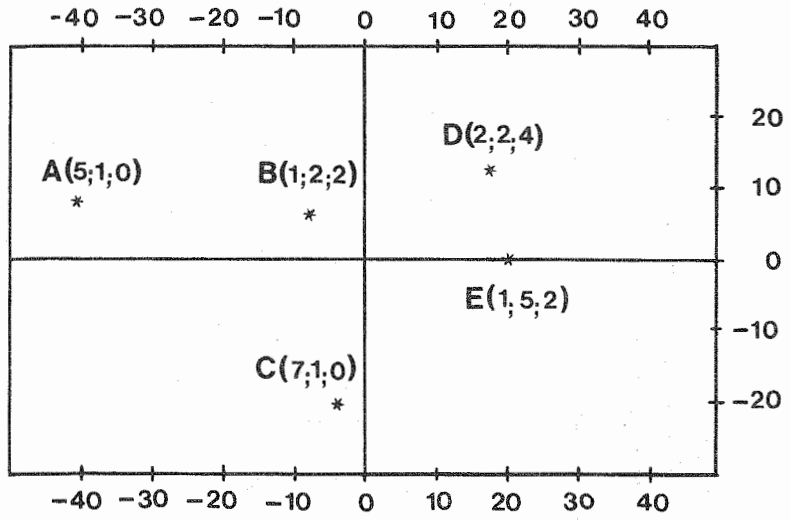


FIGURE 3
Dendrogram of the hierarchical cluster analysis based on thirty specific questions

FIGURE 4
Discriminant space for five clusters of judges (A to D) based on specific questions. In parentheses: number of professional, employer-nominated and labour-nominated judges in each group



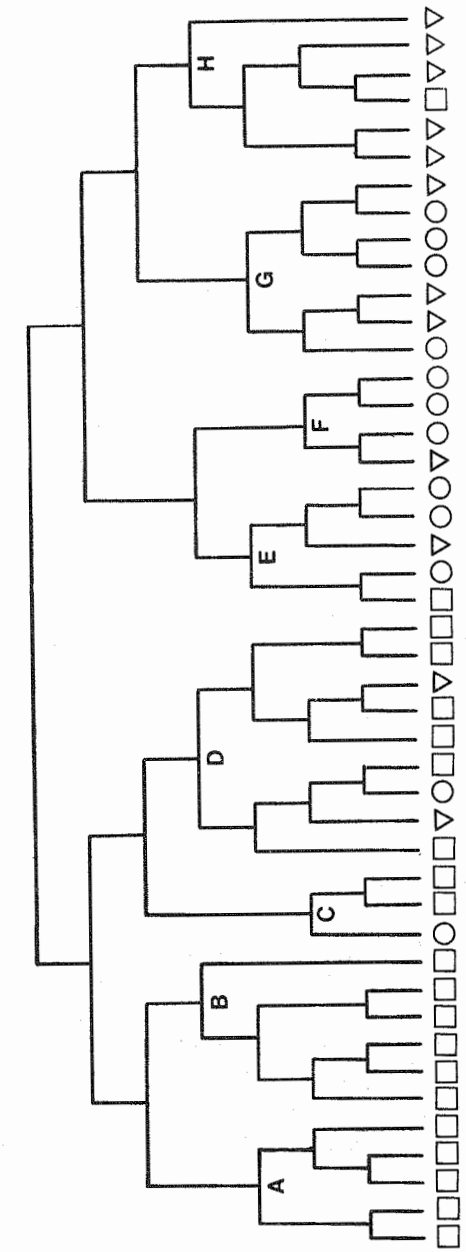
*centroids of the clusters

competence to the others. The answers of Group E (majority of employer-nominated lay judges) go in the opposite direction.

The cluster analysis of the twenty-four general questions results in eight groups (cf., Figure 5). The first two discriminant functions comprise 46 percent and 28 percent of the total variance. Within the restrictions given by the hierarchical structure of the dendrogram, the groups are ordered from left to right according to the second (vertical) discriminant function (cf., Figure 5).

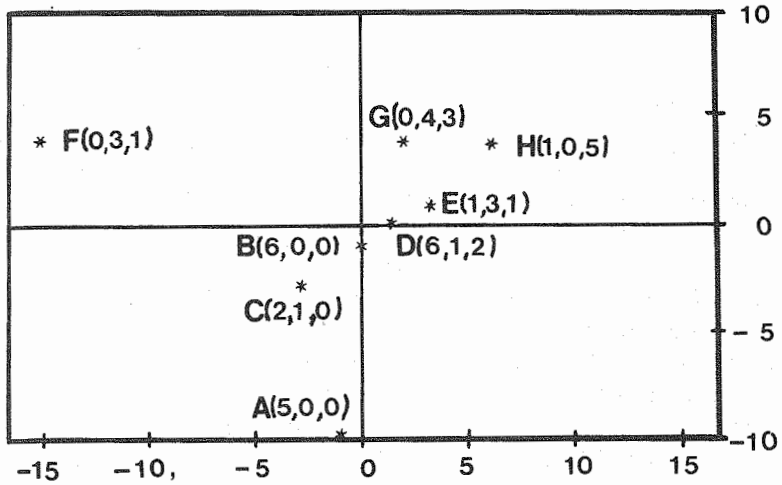
The discriminant analysis for the clusters derived from the answers to the general questions allows an ordering of the groups, with the exception of group F, along the diagonal from the left at the bottom to the right at the top (cf., Figure 6), beginning with groups composed of

FIGURE 5
Dendrogram of the hierarchical cluster analysis based on twenty-four general questions



□ professional judge, ○ employer-nominated lay judge, ▽ labour-nominated lay judge

FIGURE 6
Discriminant space for eight clusters of judges (A to H) based on general questions. In parentheses: number of professional, employer-nominated, and labour-nominated judges in each cluster



*centroids of the clusters

PJs (A, C, B, D), followed by the groups E and G, where the employer-nominated LJs prevail, and finally by group H with a clear majority of labour-nominated LJs. Group H can be characterized by: positive attitude towards group decision-making, perceived equality of LJs' satisfaction with the amount of the others' participation in the discussion, remembering some fierce debates between PJs and LJs, finding decision-making rather difficult, and considering a well-groomed appearance is important. Group A responds in the opposite direction. The position of group F (employer-nominated LJs) becomes clear by contrasting it to the position of group H (labour-nominated LJs). The members of group H report: high importance of LJs' impartiality, high frequencies of early agreement, absence of fierce debates, high frequencies of unanimous decisions, no superiority of PJs and longer

duration of the deliberation process. The opposite is true for group F, for which industrial tribunals are associated with conflicts and predominance of the PJ.

Discussion

Although the three members of the industrial tribunal, i.e., the PJ and the two LJs, are formally equal partners in the decision process, the LJs obviously attribute more expert power to the PJ than to the other LJ. The LJs were not asked how their own competence compared to that of the other LJ and to that of the PJ, but how the competence of the other LJ compared to that of the PJ. This may in part explain why the role differentiation in almost all relevant questions showed up so clearly. When the LJs had to compare their own role with that of the PJ, i.e., when they were asked if they perceived themselves as virtually equal partners to the PJ in the deliberation process, the difference in perceived expert power became less visible. Most of them were convinced or pretended to be convinced of their equality, and assumed that the PJs looked at them as equals. On the other side, the PJ stated unequivocally that LJs were in fact not his equal partners in decision-making. We may assume that wishful thinking biased the reports on both sides in opposite directions. A tendency to overestimate one's own participation and influence is also reported in a policy-oriented study of Nitsch and Schwarz (1980) on labour courts in Austria.

An alternative explanation would be that the term 'equal' had a different meaning for LJs and PJs. The former might have thought of LJs as 'formally equal', which is right according to the law, whereas the latter might have thought of LJs as 'truly equal', which seems wrong according to empirical evidence. However, even if we preferred this interpretation, we would again resort to defence mechanisms or wishful thinking as explanations of difference in word meanings.

Some of the answers to questions which were not immediately related to the difference in expert power can nevertheless be interpreted within this context. PJs feel less bound by legal norms, make less efforts to convince the other members of the tribunal, perceive the LJs' arguments as rather emotional, are less enthusiastic about the merits of group decision, and find personality characteristics of

the LJs more important than their knowledge and competence. This fits well with the PJs' self-concept as legal experts. Unanimity in the final decisions may be more important to the PJ because he perceives himself as an expert and expects the others to acknowledge his superiority. Therefore, not arriving at a unanimous decision may be experienced by the PJ as a personal defeat.

The testing of Hypothesis 2 (conservatism of employer-nominated LJs) rests almost exclusively on attitudes towards robe-wearing. This is unfortunate, since we cannot be sure that these attitudes are sufficiently related to more central indicators of conservatism. We cannot tell, either, whether and in what way differences in conservatism affected the process and outcome of decision-making. However, compatible with Hypothesis 2 is the fact that labour-nominated, as well as employer-nominated lay judges, who explicitly stated a preference for the conservative party, tended to be located at the upper-right corner of their group's dispersion in the discriminant space based on the general questions. On the other hand, colleagues who prefer the social democratic party tend to be located at the lower-left corner. By rotating the axes of Figure 2 counter-clockwise 45°, the new horizontal axis separates most distinctly the labour-nominated LJs on the left, and the employer-nominated LJs on the right. On this dimension, the PJs have about the same score on the average as the labour-nominated LJs (cf., Figure 2). We may safely assume that this dimension is related to conservatism. A varimax rotation of the discriminant space (not presented in the results section) actually arrives at such a location of axes. In addition, there are some indications that the employer-nominated LJs tend to report more positive experiences with industrial tribunals in general and with the deliberation of the most recent case in particular.

The fact that PJs do not discriminate well between employer- and labour-nominated LJs is probably less a reflection of the similarity of the behaviour of the lay members of the tribunal than it is a reflection of the reconstruction of their behaviour according to the same schemata.

The correlations between answers to selected general questions and answers to relevant specific questions are compatible with the idea that concrete events are stored and remembered according to schemata by which a person structures his/her prior experience and knowledge in a coherent way. Therefore, we cannot expect that two

persons reporting carefully on the same social events will agree on all aspects of these events, and that interviewing someone on his/her observations will lead to an objective account of the social episodes, even if the interviewees are willing to be accurate.

Many important social interactions, like jury decision-making in a real court, or decision-making in government and business, cannot be studied by direct observation. We have to rely on reconstructions of the social events by participants. What we need is a better understanding of the reconstruction process itself. This can only be achieved by comparing videotaped and objectively scored sequences of social interactions with reconstructions from memory of these interactions by participants and bystanders.

The two discriminant analyses of answers 1) to specific questions on the most recent case (Figure 1), 2) to the questions on general experience with industrial tribunals (Figure 2), give us no more than an overall impression of the location of the three groups of judges in the discriminant space. The apparent separation of the groups is only in part based on true discriminant variance. The risk of capitalizing on error variance is especially high in a small sample of persons with a large number of variables. This has to be kept in mind if we compare Figure 1 with Figure 2. In both analyses, the vertical discriminant function locates the group of PJs on the top and the two groups of LJs on the bottom. Both of the first discriminant functions can roughly be characterized by questions on competence and on attitudes towards participation of lay members in decision-making. Among the specific questions (first analysis), there is a predominance of competence items, and, among the general questions, a predominance of attitude items. On the whole, we find again that PJs are perceived as more competent than LJs and are less favourable towards group decision-making. By varimax rotation, only in Figure 2 (based on general questions) can a conservatism dimension be found — an interpretation which is suggested by the location of lay judges with conservative preferences in the discriminant space. In the discriminant space of the specific questions, no differentiation according to party affiliation could be detected. The more concrete reports on the facts of a specific case are less affected by differences in basic values than are the reports on general experience with industrial tribunals.

The cluster analyses also reproduce, albeit with some overlaps, the separation between PJs and LJs. In addition, we find some psychologically more or less meaningful subdivisions. A counter-clockwise rotation of 30° of the discriminant space derived from

answers to specific questions (Figure 4) results in two orthogonal dimensions which could be labelled as 'competence' and 'dissent'. Speculating about possible causes of the group differences on the dissent dimension, we may assume that it comes from different types of cases (controversial or rather clear cases) which were selected by the judges. A case may have been ambiguous and the discussion therefore controversial for one or both of two conditions, 1) because the legal norm is not precise enough, 2) because the facts are not clear. Unfortunately, with respect to this problem, the content analysis of the interviews does not allow reliable conclusions. However, we cannot exclude the fact that the group differentiation is dependent also on personality or role differences. The latter might be the case, especially with the difference between group D (predominantly labour-nominated) and group E (predominantly employer-nominated).

Conclusions

Studying the process of decision-making within industrial tribunals by interviewing the professional judges and lay members turned out to be a rather difficult and problematic approach. We had hoped to get more precise information on the very process of interaction during the deliberation stage, in order to verify hypotheses on social influence in decision-making groups which, as yet, have been tested in laboratory settings only. However, since it was not possible to interview the three members of a tribunal on the same case, we were not in a good position to separate facts from their subjective interpretations. Nevertheless, what we learned about the different role perceptions of professional judges and lay members of the industrial tribunals seemed to us well worth reporting.

In order to cope with the serious shortcomings of any single technique in studying group decision-making of law courts, one has to apply several different approaches simultaneously, even though this would be expensive and rather time-consuming. Such strategy could comprise performing laboratory experiments, reconstructing the process by interviewing the participants, collecting critical incidents from participants, using sophisticated observation and note-taking by participants.

We have started studies on jury decisions, combining laboratory with field research on the same cases, in order to bridge the gap

between the different approaches, and studies on the rules of reconstructing episodes of social interactions, in order to make interviews and content analysis of proceedings more scientifically viable.

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References

Abelson, R.P. (1981), 'Psychological Status of the Script Concept', *American Psychologist*, 36, 715-29.

Argyle, M., Furnham, A. and Graham, J.A. (1981), *Social Situations*, Cambridge: Cambridge Unversity Press.

Asendorpf, J. and Wallbott, H.G. (1979), 'Maße der Beobachtungsübereinstimmung; Ein systematischer Vergleich', *Zeitschrift für Sozialpsychologie*, 10, 243-52.

Brandstätter, H. (1978), 'Social Emotions in Discussion Groups', in H. Brandstätter, J.H. Davis and H. Schuler, *Dynamics of Group Decisions*, Beverly Hills: Sage.

French, J.R.P., Jr. and Raven, B.H. (1959), 'The Basis of Social Power', in D. Cartwright (ed.), *Studies in Social Power*, Ann Arbor: University of Michigan Press.

Hepple, B.A. and O'Higgins, P. (1976), *Employment Law* (2 ed.), London: Sweet and Maxwell.

Lautmann, R. (1972), 'Richterliche Strategien zum Abschluß eines Verfahrens', in R. Lautmann, *Justiz — die stille Gewalt*, Frankfurt am M.

Lisch, R. and Kriz, J. (1978), *Grundlagen und Modelle der Inhaltsanalyse*, Reinbek: Rowohlt.

Nemeth, C.J. (1981), 'Jury Trials: Psychology and Law', in L. Berkowitz (ed.), *Advances in Experimental Social Psychology*, Vol. 14, New York: Academic Press.

Nitsch, P. and Schwarz, B. (1980), 'Hauptergebnisse einer Untersuchung über die Rechtsdurchsetzung im arbeitsrechtlichen Verfahren', *Aktuelle Sozialpolitik*, 335-8.

Opp, D. (1972), *Verhaltenstheoretische Soziologie*, Reinbek: Rowohlt.

Peltzer, U. (1979), *Interaktion und Entscheidung in Gruppen*, doctoral dissertation, University of Augsburg, Augsburg: Maro.

Rollett, B. and Bartram, M. (eds) (1976), *Einführung in die hierarchische Clusteranalyse*, Stuttgart: Keltt.

Rüttinger, B. (1978), 'Friendliness and Group Consensus: Field Study', in H. Brandstätter, J.H. Davis and H. Schuler (eds), *Dynamics of Group Decisions*, Beverly Hills, Sage.

Saks, M.J. and Hastie, R. (1978), *Social Psychology in Court*, New York: Van Nostrand Reinhold.

Seidman, R.B. (1969), 'The Judicial Process Reconsidered in the Light of the Role-Theory', *The Modern Law Review*, 32, 516-31.

Ward, J.H. (1963), 'Hierarchical Grouping to Optimize an Objective Function, *Journal of American Statistical Association*, 58, 236-44.

Wyer, R. S., Jr. and Carlston, D.E. (1979), *Social Cognition, Inference, and Attribution*, Hillsdale, New Jersey: Erlbaum.

Zöllner, W. (1977), *Arbeitsrecht*, München: Beck.

Les délibérations au conseil de prud'hommes vues par des juges professionnels et des juges non-professionnels

Des entretiens ont été effectués auprès de vingt-et-un juges professionnels et vingt-quartre juges non-professionnels (la moitié nommée par les employeurs et l'autre moitié par les employés) d'un conseil de prud'hommes en Bavaria. L'enquéteur leur a demandé de 1) se constituer le processus de délibération d'une affaire récente et controversée 2) décrire leur expérience en générale de la phase de délibération au conseil de prud'hommes. Les resultats ont confirmé l'hypothèse que l'expertise du juge professionnel domine clairement la délibération et le jugement rendu. Cependant, les juges non-professionnels sont plus covainçu de l'importance de leur tache que les juges professionnels. D'autre part, les juges non-professionnels sont réticents d'accepter le fait que leur statut n'est pas du même milieu que les juges professionnels au conseil de prud'hommes. Des écarts importants ont été noté entre la représentation du role de l'autrui et de soi-même. Mais, ni les juges professionnels ni les juges non-professionnels se rendaient compte de ces disparités. Les deux groupes de juges se sont différentiés principalement sur une dimension de 'conservatisme'. D'autre part selon l'hypothèse, les descriptions écrites des expériences générales des juges ont determinés les reconstitutions des episodes concrets des intéractions sociales.