Legal Psychology

The Trial Process. BRUCE DENNIS SALES, Ed. Plenum, New York, 1981. xvi, 506 pp. $39.50. Perspectives in Law and Psychology, vol. 2.

What legal sociology was to the '60s and legal economics to the '70s, legal psychology promises to be to the '80s: the growth stock in law and the social sciences. The past four years have seen an outpouring of books (13 by my count) and articles on psycholegal research, more than in the preceding three-quarters of a century. The field has come of age. This book is the second volume in a series Perspectives in Law and Psychology edited by the director of a joint-degree program (the first of only two of its kind in the country) at the University of Nebraska. It consists of 14 papers written mostly by psychologists and intended to provide a "greater understanding of the breadth of the law-psychology interface."

The opening chapter sets the stage with a compendious review of the empirical literature on the trial process. Over half of the 270 citations pertain to the jury. Indeed, most of the book focuses on the jury, with eight chapters on voir dire, jury deliberation, and social psychological theories and mathematical models of jury decision-making. The remaining chapters cover eyewitness testimony, sentencing, and parole revocation. The closing chapter is a brief but thoughtful critique of the theory and methodology of social-psychological studies of the criminal justice system.

This anthology is representative of the state of the field in several respects:

1) *Subject matter*. The legal in psycholegal research today tends to be narrowly identified with criminal rather than civil justice, with the judicial rather than the legislative or administrative process, and with the administration of law rather than substantive or procedural law—in essence, with the criminal justice system. I would liken this book not to a geological survey but to a sinking of shafts into areas with the most abundant deposits. However, there seems to be no systematic or principled basis to guide psychological inquiry in the law. If, for example, 90 percent of criminal cases are disposed of by pleas and only a minute fraction by jury trial, why have psychologists telescoped their attention on that phase of the proceedings? Perhaps subsequent volumes of this series may contribute to broadening the vision of the psycholegal enterprise.

2) *Methodology*. Contemporary social psychologists are caught in a dilemma: how to continue in the tradition of laboratory experimentation and respond to the call of the times for "socially relevant" research. One means of reconciliation, of course, is laboratory study of the jury—an application of traditional small-group research to the real world. The jury studies are characterized by the expected methodological cleanliness, but the trade-off is a lack of verisimilitude to the processes purportedly being simulated and an inability to generalize to the courtroom. These difficulties, which are exemplified in several of the seven chapters that report experimental jury research, are described in the final chapter of the book.

3) *Legal relevance*. With some notable exceptions, psycholegal studies at present bear little or no application to the policy concerns of the law. They seem designed primarily to validate social psychological theories rather than to investigate legal phenomena. Five of the papers in the book manifest this orientation. Studies of the impact of a defendant's attractiveness on a juror's decision, for instance, say something about social perception theory but produce no information meaningful to law. There is no reason to believe that concepts and knowledge developed in different contexts for different purposes can be transposed wholesale to legal settings. In contrast, the papers on voir dire, sentencing, and parole revocation spark legal interest precisely because they are marshaled and organized around recognizable policy issues.

4) *Normative analysis*. Law and legal institutions are means for attaining social ends. A jury is charged not only with accurate fact-finding; it also serves functions—for example, interposing the community conscience and legitimating official action—that can run at cross-purposes with fact-finding. These normative parameters provide a framework for analysis of the jury. Psycholegal studies tend to approach the jury on utilitarian grounds and neglect the other values, extrinsic to fact-finding, that are implicated in a trial. Thus, several contributors to the book discuss jury impartiality in terms of a verdict reached in reliance exclusively on the evidence. But the fact is that juries can, do, and arguably should render decisions grounded not only on the evidence but on their sense of rightness. A feature of the judicial process that enjoys respectability in the law but has no counterpart in science is that facts are manipulated to serve ulterior normative purposes. This is because the ultimate task of law is not the ascertainment of truth but the making of value judgments. If empirical research is to be of policy use to law, it has to take into account the normative parameters of legal questions.

Simply put, legal psychology reflects the operation of the "law of the hammer": give a child a hammer and it will find that everything needs pounding. It is a natural tendency to frame new problems in ways that require for their analysis those methods and concepts with which one is most familiar. The objection is not to pushing one's discipline to the utmost, but that in so doing the legal dimensions of the problem are ignored. Psychologists are trained in the scientific method; they are socialized to think in terms of formulating and testing theories. Lawyers, on the other hand, are trained in the skills and sensitivities needed for regulating rather than understanding human conduct. These different mind sets present obstacles to rapprochement. A certain trained incapacity to view things the way the other discipline sees them is inevitable, yet to overcome it is indispensable to interdisciplinary endeavor. For this reason it would have been desirable if legal scholars had contributed commentaries on the scope, legal significance, and normative premises of the empirical studies.

Notwithstanding the shortage of legal perspective, the anthology is most useful in compiling several papers that are noteworthy additions to the empirical literature. Those by Bermant and Shapard and by Ebbesen and Konečni, in particular, merit highlighting. The sum of the papers may not be more than the whole, but individually they realize the editor's aspiration of providing "an important pedagogic and resource tool" for researchers and students.

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