# A Psychological View of the Legal System

Linda Anderson Foley

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#### ♦ Dedication ♦

To my father, Harry C. Anderson.



♦ The most controversial issues facing society generally are argued in the courts. Thus abortion, pornography, the insanity defense, and capital punishment have been, and certainly will continue to be, addressed in the legal arena. Since these and many other issues decided by the courts are social as well as legal questions, social science can be of great assistance in their clarification.

Both lawyers and psychologists saw the benefits of collaboration early in the 20th century. However, cooperation between the disciplines started off slowly and gained momentum only in the last 20 years. Today, psychologists are researching every area of the legal system, and they are also applying their expertise to the legal system as expert witnesses in the courts, therapists in prisons, and trainers in law enforcement.

Many recent events have raised questions about the legal system which can best be answered from a psychological perspective. These events have included a videotaped beating of a California motorist by police, a well-publicized rape trial of a U.S. senator's nephew, the trial of a man accused by his daughter of killing her childhood friend 20 years before, and the arrest of a serial murderer who claims to have eaten parts of some of his victims. Each of these incidents raises questions which demonstrate the interface between psychology and the legal system. Do the police use excessive force when interacting with the public?

Can an accused rapist receive a fair trial if the media publishes information not allowed at the trial? Can an adult remember events from her childhood which she had repressed for 20 years? Is someone who commits serial murder and mutilation insane and, therefore, not to be punished? These questions concerning the legal system are ones that psychology addresses.

#### Purpose

This book is designed to help the reader better understand how the legal system functions by applying psychological research and theory to the topic. It describes and discusses the ways in which psychology has analyzed and interfaced with the legal process. Since the legal system is composed of people, psychology—especially social psychology—can help the student understand the participants and how they affect each other. The book describes how human characteristics and psychological factors influence attitudes, decisions, and behavior throughout the legal process.

The aim of the book is to provide a comprehensive, current, and readable text for the undergraduate student in both psychology and criminology. Although an introductory text, it is challenging enough to use as a supplementary text for graduate students considering specialization in law/psychology or for law students interested

x Preface

in the utility of psychology in the practice of law. The book covers traditional topics in psychology and the law, plus current issues, such as: victimization, the death penalty, child custody, child witnesses, and pornography. There is discussion of victim's reactions, the psychology of police and the court system, as well as the insanity defense. The theoretical discussion is applied to real life through boxed examples of recent legal events such as the McMartin preschool case, the Hinckley trial, the rape at Big Dan's Tavern, and the abuse of Hedda Nussbaum.

#### Organization

Psychology and the law, although two very different disciplines, are both concerned with human behavior. They complement each other and, in cooperation, can advance the goals of each discipline. In order to understand how these two divergent fields interact, it is necessary to look at the differences and similarities between them. Chapter 1 begins this exploration with a short historical review of the two disciplines followed by an examination of their assumptions, a comparison of the training of professionals in each, and an overview of areas in which they overlap.

Chapter 2 focuses on crime patterns and the amount of crime in our society. It begins by describing the sources and accuracy of crime statistics. The chapter continues with a discussion of why victims and bystanders will or will not report crimes to the police. This chapter concludes with a discussion of crime waves and projections of future crime rates.

Insight into the reasons for criminal behavior must be based on an understanding of the acquisition of normal behaviors. Therefore, Chapter 3 outlines the theories of development used to explain how people learn to behave. This chapter includes information on conditioning, modeling, the effects of punishment, the development of a conscience, and deviant behavior. Chapter 4 progresses to theories of criminal behavior and deviance—biological, sociological, social-psychological, and psychological—and ends with a discussion of women in crime.

The 1970s saw new attention directed toward the victims of crimes and the advent of the field of victimology. Chapter 5 examines victimization and describes the problems victims face. The chapter concludes with an overview of methods victims use to cope with their situations.

Law enforcement is the main link between the public and the criminal justice system. The videotaped beating of Rodney King in the spring of 1991 focused attention on the functioning of police officers in the community. Chapter 6 describes the selection and training of police officers. It then examines the interaction of police with the public and future trends in community policing. The chapter ends with a discussion of police interrogation methods.

The logical sequel to an analysis of law enforcement is an examination of the process from arrest to trial. Chapter 7 describes the functions and discretion of the prosecutor and the grand jury. The chapter also covers pretrial proceedings and plea bargaining.

Chapter 8 continues the progression through the criminal justice system by examining the jury trial and its participants. It emphasizes the social psychology of the trial process and jury selection. The next two chapters examine the trial process more closely. Chapter 9 looks at the issues surrounding eyewitness identification. It continues with the related topics of expert testimony and the child witness. Chapter 10 deals with jury deliberation and sentencing.

Focus shifts then to the offender, first in terms of responsibility and then disposition. Ever since the institution of an insanity defense, the courts have depended on the expert testimony of mental health professionals to determine the criminal responsibility of the defendant. Issues related to the insanity plea and competence are discussed in Chapter 11. Next, Chapter 12 concentrates on the adjudicated offender. It begins with an analysis of the likelihood of a criminal ever being caught. It then discusses the disposition and rehabilitation of offenders, followed by a discussion of the death penalty.

Chapter 13 discusses a new area in psychology and law: family law. This area of noncriminal law focuses on marriage and its dissolution with special emphasis on custody and its impact on the children of divorce. Finally, Chapter 14 is a collection of topics related to intervention and prevention: bystander intervention, pornography, deterrence, and gun control.

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### Contents

Preface	ix	The Effects of Punishment	57
		The Development of a Conscience	62
		Deviant Behavior	65
The Disciplines of		Summary	69
Psychology and the Law			
Historical View	2	4	
Assumptions	7	Theories of Criminal Behavior	
Professional Training	12	Biological Theories of Criminal Behavior	72
The Psychology and Law Interface	20	Sociological Theories of Criminal Behavior	80
Summary	26	Social-Psychological Theories of Criminal	
		Behavior	84
		Psychological Theories of Criminal Behavior	88
Crime Patterns		Women in Crime	92
Crime ratterns		Summary	94
Sources and Accuracy of Crime Statistics	28		
Reporting Crimes to the Police	35		
Crime Rates and Crime Waves	41		
Summary	49	Victims of Crimes	
		Victimization	98
		The Impact of Crimes on Victims	105
· · · · · · · · · · · · · · · · · · ·		Coping with Victimization	115
Socialization: How People Learn to Behave		Summary	123
Learning to Behave	52		

54

Modeling

Law Enforcement		The Verdict and Sentencing	
Recruitment, Screening, and Training of		Jury Decision-Making	236
Police Officers	126	Sentencing	248
A Psychological Profile of the Police Officer	130	Summary	258
Police Discretion and the Arrest Process:			
Police Interactions with the Public	138	<u> </u>	
Police Interrogation Methods	147 151	<b>Mental Illness and Criminal</b>	Justice
Summary	131	The Insanity Defense	260
7		Incompetent to Stand Trial	276
		Summary	277
The Process from Arrest to Tri	ial	Cumuary	2.,,
The Jail Experience	154		
Functions and Discretion of the Prosecutor	160	12	
The Grand Jury	166	Corrections	
Pretrial Proceedings	169	The Likelihood of Being Caught	280
Plea Bargaining	174	Life in Prison	283
Summary	180	The Death Penalty	298
		Summary	301
8		^	
The Jury Trial			
Participants in Legal Proceedings	184	Family Law	
The Trial Proceedings	186	Marriage and Dissolution	304
The Jury Selection Process	195	Children of Divorce	314
Summary	207	Summary	325
9>		14	
Witnesses		Crime Intervention and Pre	vention
Eyewitness Identification	210	Bystander Intervention	328
The Expert Witness	218	Pornography	335
The Child Witness	225	Deterrence	341
Summary	232	Guns and Their Control	345
		Summary	349
		References	351
		Indexes	375

### The Disciplines of Psychology and the Law

#### **Historical View**

The Historical Interface of Law and Psychology

#### **Assumptions**

Assumptions about the Law Assumptions in Psychology

#### **Professional Training**

Law School

Graduate School in Psychology

#### The Psychology and Law Interface

Obstacles

Legal and Psychological Methods
Differences Between the Disciplines
Similarities Between Law and Psychology
Summary

#### **Historical View**

- ♦ A black motorist, Rodney King, is chased and stopped by California police for a traffic violation in March 1991. The police surround King and fire a 50,000-volt Taser stun gun at him. Three police officers take turns hitting, kicking, and smashing King with truncheons while he lies helplessly on the ground. When the brutal attack is over, King has a broken ankle, a burn on his chest, a crushed cheekbone, eleven fractures of the skull, brain damage, and internal injuries. This shocking beating might have gone unnoticed if a bystander had not videotaped it and the eleven watching police officers. Later, the tape and photographs of the battered King are shown to horrified viewers of television newscasts. Is excessive police violence common practice? Can honest citizens entrust their safety to law enforcement officers? What type of training are police officers given to prevent their use of excessive force? Are police officers screened for violent behavior? Were the white police officers acting out of racism?
- ♦ After 13 years of marriage, Donald and Ivanna Trump announce their intention to divorce. The couple's conflict over a prenuptial agreement and the status of Donald's involvement with Marla Maples are updated daily in the tabloids. Lawyers and courts spend months coming to an agreement over the distribution of Donald Trump's vast wealth. Every aspect of the controversy is detailed in the daily newspapers. What is the impact of divorce on the couple involved? How equitable are divorce settlements? What impact does the conflict between their parents have on young children of divorcing parents?
- ♦ A young man in handcuffs leads police to an apartment where he was held captive and in which the police find eleven dismembered bodies. Jeffrey Dahmer, 31, confesses to killing and mutilating seventeen young men over the course of 13 years. Dahmer claims to have saved some body parts to "eat later" and painted three skulls after boiling them to remove the skin. Dahmer is alleged to have had sex with several of the victims, some after their death. Later Dahmer pleads not guilty to the charges and indicates he would plead insanity if convicted. What is the legal definition of insanity? Is Dahmer insane? How do psychologists explain his criminal behavior? How is sanity proven in court?

The incidents described above and the questions they raise are at the interface of psychology and the law. This book will attempt to describe and discuss the ways in which psychology has analyzed and interfaced with legal processes. Since the legal system is composed of people, psychology, especially social psychology, can help the reader understand the participants and how they influence each other. The book will describe how human characteristics and psychological factors influence attitudes, decisions, and behavior throughout the legal system.

Psychology and the law are disparate professions with regard to assumptions, training of professionals, and methodology, but for a number of years they have been developing a mutually beneficial pattern of interaction, as both disciplines are interested in human behavior. Research in psychology attempts to describe, explain, and predict human behavior. The law focuses on the control of human behavior in the interest of public order and provides a mechanism whereby disputes can be settled. With these similar interests, psychology and the law complement one another and, in cooperation, can advance the goals of both disciplines.

In order to comprehend the advantages of, and difficulties in, the interactions between these two fields, let us look at some of the differences between them. We begin this discussion with a historical view of the interface between law and psychology.

Law is an ancient institution that has developed and evolved over the ages. In contrast, psychology is a relatively new discipline, dating back only a little over 100 years. Although most people think of psychologists as clinicians, psychology began as a purely experimental science with laboratories modeled after those in physics. In fact, the term **clinical psychologist** was not used until 4 years after the founding of the American Psychological Association (APA) in 1892.

#### The Historical Interface of Law and Psychology

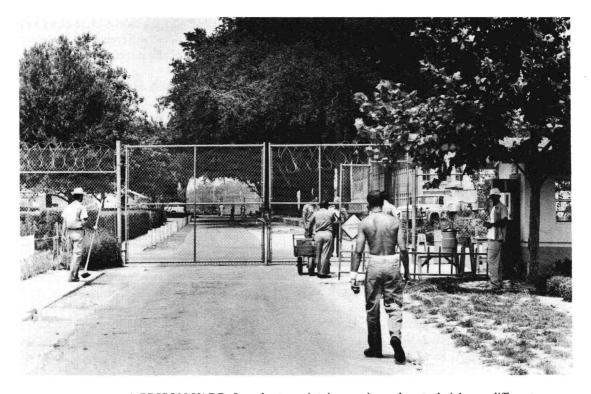
Professionals from both professions saw the advantages of cooperation soon after the inception of psychology. However, collaboration between the disciplines started off slowly and did not gain momentum until the 1970s. The first joint law (J.D.) and psychology (Ph.D.) degree was offered at the University of Nebraska in Lincoln in 1974. That same year, the first national convention of the American Psychology–Law Society (AP–LS) was held. This society was influential in the formation in 1981 of Division 41 (Psychology and Law) of the American Psychological Association. The two organizations merged in 1984 to form the American Psychology–Law Society/Division 41. By 1990, there were about 1,400 members (Grisso 1991).

#### Psychology's Research on the Legal System

Sigmund Freud in 1906 first proposed that psychology could assist the legal system in delving into the truthfulness of reported events. Two years later, an experimental psychologist at Harvard, Hugo von Munsterberg, published his book, On the Witness Stand (1908). This volume questioned the accuracy of witnesses and contended that psychology could assist in legal proceedings. Some psychologists criticized Munsterberg's work for not providing empirical support for his viewpoint. In fact, most psychologists either ignored or disagreed with him.

It was not until 1933 that Allport encouraged psychologists to extend their research to the real world, specifically the law. Later still, Kurt Lewin (1947, 1948) also advocated research addressed to real life concerns and suggested that social psychologists consider the effects of legal processes on society. But although a few works (e.g., Burtt's Legal Psychology (1931); Robinson's Law and the Lawyers (1935)) addressed the legal system from a psychological viewpoint, until the 1960s most work on the legal system was done by anthropologists, sociologists, or psychiatrists (Bermant, Nemeth & Vidmar 1976; Tapp 1977).

**Courts** Early research on the legal system focused entirely on the courts. The University of Chicago Jury Project, formed in the 1950s, was the first major research undertaking of this type. Many books and articles were derived from this project, the best known being *The American Jury* (1966) by Kalven and



A PRISON YARD. In order to maintain security and control violence, different sections of this large maximum security prison are separated by fences. Prisoners going from one area of the institution to another must pass through security check points. (Photo courtesy of David H. Fauss)

Zeisel (an attorney and sociologist, respectively). This work gave great impetus to research on jury trials and later work on jury selection.

**Corrections** Entry into a second area of the legal system, corrections, began slowly in the mid-century with work in the discipline of psychiatry and, to a lesser degree, psychology. At the same time professionals in the field of corrections were becoming increasingly interested in rehabilitation, many new forms of therapy were being developed. It was natural to apply these new methods to treatment of offenders. Illustrative of the acceptance of psychological methods for treatment is Menninger's book, *The Crime of Punishment* (1966), which called for a therapeutic model for corrections.

However, within ten years the tide had turned. An increase in crime, coupled with limited success in rehabilitation, provided the right atmosphere for Martinson's (1974) judgment that rehabilitation does not work. Although controversy surrounded his report, Martinson's viewpoint was widely accepted. It was not until the mid- to late-1980s that the pendulum began to swing back toward rehabilitation.

The 1970s saw mounting ethical concern about the use of prisoners as research subjects. These concerns led to large cutbacks in funding for behavioral science research in prisons, especially work on behavior modification (Bermant, Nemeth & Vidmar 1976). Meanwhile, a few psychologists were still looking at corrections. Work by Dale Smith and Dick Swanson (1979a, 1979b) on prison crowding and Rob Johnson (1987) on violence in corrections are examples of current research in corrections.

Law Enforcement In the 1970s psychological research and practice was directed at a third area of the legal system: law enforcement. Police reactions to the riots and demonstrations of the 1960s produced extremely negative public attitudes. The media reinforced those negative attitudes by criticizing law enforcement for its methods. Police departments attempted to improve their image through public service activities and community relations. While these activities were conducted with the assistance of psychologists, psychology was not theoretically advanced enough to provide insight into and solutions for the complex problems that divide citizens from law enforcement. Programs proposed by psychologists were not particularly successful. However, the failures of early programs pointed out the direction for later, more effective ones (Bermant, Nemeth & Vidmar 1976).

**Other Research Areas** The 1970s also saw attention directed toward the victims of crime and the advent of the new field of victimology. Today, research is being conducted on every area of the legal system. Psychologists are also applying their expertise to the legal system as expert witnesses in the courts, therapists in prisons, and trainers in law enforcement.

#### The Legal System's Use of Psychology

The most important and hotly contested issues facing society generally are decided in the legal arena by the U.S. Supreme Court. Thus abortion, discrimination, and capital punishment have been, and certainly will continue to be, addressed by this body. Since these and many other issues decided by the courts are social as well as legal questions, social science has much to offer in the decision-making process.

Prior to the 20th century, the Supreme Court made decisions about social issues under its consideration based on the personal experiences, opinions, or interpretations of the individual justices. A new procedure was introduced by Justice Louis Brandeis who filed what are now referred to as "Brandeis briefs." He defended social welfare legislation by referring to research and testimony given by economists, sociologists, physicians, and health workers. This technique was first used in 1908 in the *Muller v. Oregon* decision.

Not until the landmark Brown v. Board of Education (1954) decision did the Supreme Court again use social science findings. This decision, that "separate but equal" schools were unconstitutional, contained a brief filed by psychologist Kenneth Clark and other social scientists. In the ruling, the court cited seven studies indicating that segregation of children had a detrimental effect on

#### Box 1.1

#### Miranda

Ernest Miranda had a long history of arrests and incarcerations before moving in with Twila Hoffman and her two children. Despite Twila's legal marriage to another man, she and Ernest had a child together. Miranda avoided conflicts with the law while hopping from one menial job to another. Finally, he seemed to settle into work at United Produce in Phoenix. But this apparently conventional life-style was short-lived.

At 11:30 p.m. on March 2, 1963, a man abducted and raped an 18-yearold woman. The abductor stole \$4 from the victim and fled. Less than two weeks later, Ernest Miranda was arrested for the rape and eventually confessed. Although the police denied making either threats or promises in order to obtain the confession, Miranda described the situation differently. He claimed that he was badgered, coerced, and deprived of sleep. He also alleged that the police promised to get him psychiatric help and to drop the robbery charge if he confessed to rape.

After viewing a lineup, the victim was unsure whether Miranda was the rapist and asked to hear his voice. Meanwhile, Miranda was told that he had been positively identified. Thus, when asked if she were the victim, Miranda responded, "that's the girl."

Miranda was convicted and the Arizona Supreme Court upheld his conviction. However, the U.S. Supreme Court reversed the lower court's decision, concluding that "Miranda was not in any way apprised of his right to consult with an attorney and to have one present during the interrogation, nor was his right not to be compelled to incriminate himself effectively protected in any other manner. Without these warnings the statements were inadmissable" (*Miranda v. Arizona*, 1966). In its decision the court cited social science research on police interrogation and false confessions (e.g., Frank & Frank 1957, Sterling 1965, Weisberg 1961).

As a result of this decision, police officers began to read to suspects their "Miranda" warnings:

"You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to the presence of an attorney to assist you prior to questioning and to be with you during questioning if you so desire. If you cannot afford an attorney, you have the right to have an attorney appointed for you prior to questioning. Do you understand these rights?"

The Supreme Court decision did not really help Miranda. There was enough other evidence to convict him in his new trial. He was incarcerated until 1972. Ernest Miranda was killed in a barroom brawl 4 years later.

Source: L. Baker, Miranda: Crime, Law, and Politics (New York: Atheneum, 1983), pp. 177-178.

blacks. While there is debate about how influential the social science data were to the *Brown v. Board of Education* decision, there is no doubt as to the importance of the precedent. Following that decision, attorneys expanded their use of social science and psychological research as documentation for their cases. As a result, the Supreme Court has increasingly turned to social science and psychology for information to support judgments. However, the justices apparently still only use social science research when more traditional legal grounds are not adequate (Kerr 1986). See MIRANDA for a current use of psychological data in a Supreme Court decision.

**Expert Witnesses** Ever since the institution of an insanity defense, the courts have depended on the expert testimony of mental health professionals to determine the mental responsibility of the defendant. More recently, psychologists have been asked to testify about the accuracy of eyewitness identification, the abused spouse syndrome, child custody, biases in testing, and conditions in prisons, to name only a few examples. In addition, a growing number of lawyers are turning to psychologists and other social scientists for assistance in selecting juries.

#### **Assumptions**

In order to understand the obstacles to interactions between psychology and the law, it is necessary to examine the distinguishing features of each discipline.

#### Assumptions about the Law

Law is based on assumptions about people's behavior and how it can be controlled. For example, criminal law assumes people are less likely to commit a crime if they know they will be punished for it (Monahan & Loftus 1982). Underlying this assumption is the belief that people are reasonable and logical—they can understand the law.

A fundamental concept in the law is that people decide what they will do by weighing the options available to them. Thus, many aspects of the legal system are based on what a "reasonable person" would do under specific circumstances. If an individual's behavior is not that of a reasonable person, that individual will be held responsible for the outcome of the behavior. This is true whether the behavior has violated criminal law or the rights of another person or body (tort).

#### Definitions of the Law

Over the centuries a number of definitions of the law have evolved. Bonsignore, et al. list a number of these definitions:

- 1. Law consists of rules and regulations of the state for the governance of society.
- 2. Law protects what is of value in society.
- 3. Law is a means to make society run more smoothly through the recognition and securing of rights.

- 4. Law is whatever the people want it to be.
- 5. Law is a means of oppression—it is designed to preserve the economic, political, and social position of the haves at the expense of the have-nots.
- 6. It's who you know—face it, the law is what judges, lawyers, and police say it is. (1974, p. x)

Each of these definitions contributes some insight on the legal system, but none completely defines the law. Whatever definition of law is used, it is apparent "law is a dynamic enterprise that evolves during the course of human activity. The making of decisions in legal contexts is not simply a function of the application or implementation of 'black letter' law. Claims are pressed, choices made, and disputes settled because of interactions between personal variables (e.g., legal reasoning, prior experience, personality) and legal norms—both formal and informal, written and discretionary" (Tapp & Levine 1977, p. 249).

#### Statutory Law and Common Law

There are two primary sources for laws: common law and statutory law. Statutory law consists of the set of laws passed by legislators. While this sounds simple and straightforward, it is really quite complicated. Legislators in every state pass laws directed at controlling the same behavior. Thus, a behavior might be legal in one state and illegal in another; for example, prostitution is legal in Nevada, but illegal in every other state. And a behavior which is universally considered illegal might have very different sanctions in different jurisdictions; for example, some states can impose the death penalty for first-degree murder while others sentence the murderer to life imprisonment.

In addition to the laws for each of the fifty states, the federal government has its own set of laws. Adding to the complexity, each set of laws is constantly in a state of flux as new laws are continually being passed. Some of these new laws contradict older laws, which are seldom repealed and are therefore still in effect. For an example of an old law that was not repealed, see THE ENFORCEMENT OF AN OLD LAW.

Common law is law made by judges. Like statutory law, it is constantly developing and evolving. Each case that comes before a judge must be decided not only on its own merit but also on the basis of past cases. In addition, the judge must take into account the constitution, statutory law, custom, and the history of cases. Common law is strongly tied to past cases. Judges must justify their decisions on the basis of precedent—what has been decided in earlier, similar cases. If a case does not follow precedence, it can be appealed and might be overruled by a higher court.

One law professor has described the legal world in this manner:

It is a world of facts, statutes, rules, and precedents, a world that demands adherence to historical and traditional roles and use of an inherited language. On the other hand, our hearts tell us that there is something more to a life in law than knowing and applying rules, or solving legal conundrums for which we make a handsome wage.